TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 84

O. B. WILLIAMS AND LILLIE SHAVER HENDRIX,
PETITIONERS,

vs.

THE STATE OF NORTH CAROLINA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

PETITION FOR CERTIORARI FILED MAY 13, 1944.

CERTIORARI GRANTED JUNE 12, 1944.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [Caption omitted]

IN SUPERIOR COURT OF CALDWELL COUNTY

STATE

v.

O. B. WILLIAMS and LILLY SHAVER HENDRIX

Before Ervin, Special J., November 29, 1943, Caldwell Superior Court—Defendants Appealed

ORGANIZATION OF THE COURT

Be it Remembered that a Superior Court Term is begun and held for the County of Caldwell at the Courthouse in Lenoir, North Carolina, on November 29, 1943, it being the first Monday before the first Monday in December 1943, when and where the Honorable S. J. Ervin, Jr., assigned to and holding the courts of Caldwell County being present and presiding; and the Honorable L. S. Spurling, Solicitor for the Sixteenth Judicial District, being present and prosecuting in behalf of the State.

J. F. Parlier, Sheriff of Caldwell County, North Carolina, returned as summoned by him, the following good and lawful men to serve as grand jurors: A. S. Nelson (Foreman), and others, (naming them).

Before the jury was selected or impanelled or a plea of not guilty was entered, the defendants and each of them, through their counsel, entered a special appearance and made motion to dismiss as follows:

[fol. 2] IN SUPERIOR COURT OF CALDWELL COUNTY

SPECIAL APPEARANCE AND MOTION TO DISMISS

Now come the defendants, through their counsel, W. H. Strickland, and enter this their special appearance and motion to dismiss and would respectfully show unto the Court the following:

1. That the defendants, and each of them, have heretofore been placed in jeopardy of their liberty and that the identical cause of action has been prosecuted through the Supreme Court of the United States wherein an opinion was rendered as reported in Volume 87, Lawyers' Edition,

at page 189, wherein the judgment of the Supreme Court of North Carolina was reversed and the defendants set at liberty, said Supreme Court of the United States, specifically overruling Haddock v. Haddock, 201 U. S. 562, the former decision of said Court upon which the North Carolina Supreme Court affirmed a conviction of said defendants.

2. That the action of the Supreme Court of North Carolina remanding said cause to the Superior Court of Caldwell County for a new trial is not consistent with the opinion of the Supreme Court of the United States above referred to for the reason that the majority opinion closed as follows: "Haddock v. Haddock is overruled. The judgment is reversed and the cause is remanded to the Supreme Court of North Carolina for proceedings not inconsistent with this opinion.

It is so ordered."

3. That the Supreme Court of North Carolina failed and refused to reverse its judgment as directed by the Supreme Court of the United States but on the contrary "vacated" its judgment, it being the contention of the defendants that the Supreme Court of North Carolina having "vacated" its judgment that it was without authority thereafter to direct a new trial.

4. That the Supreme Court of North Carolina ordered a new trial of the defendants without assigning any errors [fol. 3] committed by the Superior Court of Caldwell County, and that, therefore, the opinion of the United States Supreme Court hereinbefore referred to constitutes the law of the case and is binding upon the State of North Carolina as well as the defendants.

Wherefore, the defendants, through their counsel, pray the Court on this their special appearance that said cause of action be dismissed on the grounds of former jeopardy and the other grounds herein specifically set out.

(Signed) W. H. Strickland, Atty. for Defendants.

Motion to dismiss and each portion thereof is denied. The defendants, and each of them, excepted in apt time to the ruling of the Court.

Exception No. 1.

IN SUPERIOR COURT OF CALDWELL COUNTY

BILL OF INDICTMENT

The jurors for the State, upon their oath, present: That O. B. Williams and Lillie Shaver Hendrix, late of the County of Caldwell, on the 4th day of October, in the year of our Lord one thousand nine hundred and forty, with force and arms, at and in the county aforesaid, unlawfully, wilfully and feloniously did get married to each other in the City of Las Vegas in the State of Nevada, and thereafter returned to the State of North Carolina and did live together and cohabit together in the said State of North Carolina and in Caldwell County, the said O. B. Williams having a living wife, one Mrs. O. B. Wyke Williams, living in Caldwell County, North Carolina, at the time of his said marriage to Lillie Shaver Hendrix, and the said Lilly Shaver Hendrix having a living husband, one Tom Hendrix, living in Caldwell County, North Carolina, at the time of her marriage to the said O. B. Williams, against the form of the statute in such case made and provided and against the peace and dignity of the State.

L. S. Spurling, Solicitor.

Returned a True Bill. A. S. Nelson, Foreman Grand Jury.

[fol. 4] IN SUPERIOR COURT OF CALDWELL COUNTY

PLEA

And the said O. B. Williams and Lillie Shaver Hendrix are brought to the bar of the Court here in their proper persons, by the said Sheriff of Caldwell County, in whose custody they are. And forthwith, it being demanded of them how they will acquit themselves of the premises in the said indictment, above specified and charged upon them, they saith that they are not guilty thereof, and thereof for good and for evil they put themselves upon the Country. And L. S. Spurling, Solicitor who prosecutes for the State on this behalf, does the like.

Therefore, let a jury come of good and lawful men, by whom the truth of the matter may be better known. The prisoners, O. B. Williams and Lillie Shaver Hendrix, are remanded to jail. And at the same term of said Court, in the custody of the Sheriff of Caldwell County, the said O. B. Williams and Lillie Shaver Hendrix are again brought to the bar of said Court and the following jury of good and lawful men, towit: G. W. Suddreth, and others (naming them), sworn and impanelled to speak of and concerning the premises, upon their oaths, say that said O. B. Williams and Lillie Shaver Hendrix are guilty as charged in the Bill of Indictment.

Upon the coming in of the verdict, the defendants, and each of them, move to set the verdict of the jury aside for the reason that it is contrary to the law in the case and for the further reason that the State offered no evidence impeaching the adjudication of the Nevada Courts as to the good faith of the residence of the defendants in Nevada at the time the divorces were granted.

Motion denied and the defendants, and each of them, except.

Exception No. 2.

The defendants, and each of them, move for arrest of judgment for the reason that the Statute under which these [fol. 5] defendants are indicted is unconstitutional by virtue of the Fourteenth Amendment to the United States Constitution.

Motion in arrest of judgment is denied and the defendants, and each of them, except.

Exception No. 3.

Thereupon the Court imposes Judgment as to each of the defendants as follows:

The judgment of the Court, as to the defendant, O. B. Williams, is that he be imprisoned in the State's Prison at hard labor for not less than one year nor more than three years, the defendant to wear stripes if so required by the prison authorities.

The Judgment of the Court, as to the defendant, Lillie Shaver Hendrix (Lillie Shaver Williams) is that the defendant be imprisoned in the State's Prison for not less than eight months nor more than 24 months, the defendant to wear such uniform as the prison authorities may prescribe.

S. J. Ervin, Jr., Judge Presiding.

The defendants, and each of them, in apt time objected and excepted to the signing of the foregoing judgment.

Exception No. 4.

IN SUPERIOR COURT OF CALDWELL COUNTY

APPEAL ENTRIES

Upon the rendition of the judgment the defendants, and each of them, in apt time except to the said judgment and appeal therefrom to the Supreme Court. Notice of appeal given in open Court. Further notice waived. Appeal bond fixed in the sum of $150.00. Appearance bond fixed in the sum of $1500.00 as to each defendant. The defendants, and each of them, are hereby allowed until the 3rd day of February, 1944 as time in which to prepare and serve statement of case on their said appeal, and the Solicitor for the [fol. 6] State is allowed 40 days after the date of such service as time to file exceptions or serve counter-case.

S. J. Ervin, Jr., Judge Presiding.

IN SUPERIOR COURT OF CALDWELL COUNTY

Statement of Evidence

STATE'S EVIDENCE

It is judicially admitted in open Court by both the State and the defendants that since the previous trial of this action the person designated in the Bill of Indictment as Mrs. O. B. Wike Williams has died.

It is further agreed by the State and the defendants that the evidence of the decedent as taken down by the Court Reporter on the former trial of this action may be offered

in evidence by the State, which evidence at the former trial is as follows:

Mrs. O. B. Williams (at former trial) testified that she was a Wike before marriage; that she now lives four miles East of Granite Falls in Caldwell County; that she was married to O. B. Williams November 30, 1916 in Caldwell County, North Carolina; that they were married by a preacher but did not recall his name; that she and Williams had lived together as husband and wife between 23 and 24 years or until about May 7, 1940; that they raised a family of four children and have not lived together since May 7, 1940; that she has not brought any divorce action against her husband and has secured no divorce from him.

Cross-examination:

That she has a paper that the Sheriff of Caldwell County served on her; that she has read the paper and knew what was in it.

Tom Hendrix testified for the State: That he lived in Wilkes County; that in May, 1940 he lived in Caldwell County; that he was at one time married to Lillie Shaver Hendrix, one of the defendants in this action; that he did not know just when they were married; that it has been [fol. 7] about three years since they separated; that the best he could recollect they were married about 1920; that he and Lillie Shaver Hendrix lived together as husband and wife in Granite Falls, Saw Mills and in Lenoir; that they lived together prior to and up to May 1940; that they are not now living together as husband and wife; that they had lived together as such about 19 years or somewhere about that time; that they were married in Burke County by a preacher but he did not remember who performed the ceremony; that he and the defendant, Lillie Shaver Hendrix, had not secured a divorce before May 1940.

Cross-examination:

I know that my former wife did get a divorce in Nevada. I have since remarried. There were children born to our marriage but none of them are living. That is my signature on the card which you have. I received it and mailed it back.

to Nevada (the card is identified by the witness and marked Exhibit 1).

Redirect examination:

It has been about four months since I remarried. I brought a divorce action against the present Mrs. Williams since the first trial of this case. I brought it in Caldwell County. I have never lived in the State of Nevada. I was born in Wilkes County and have lived in Ohio but I have been back in North Carolina about 20 years. I have never been to the State of Nevada.

Recross-examination:

I was living in Ohio at the time my wife got a divorce from me in Nevada.

Redirect examination:

I had been gone out of North Carolina at the time about a month. I was living in North Carolina at the time my wife left me. I know Mr. Williams and was working for him at that time. I don't know what time he left North Carolina. I don't know when my wife left. I don't know whether [fol. 8] they left at the same time or not. I was working at the store and when I went home at night she was gone. I did not see Mr. Williams or my wife until they came back. They were gone about three months or longer. It was about 7:30 o'clock when I went home and found my wife gone. I don't remember the exact month, but I think it was May, 1940.

OFFER IN EVIDENCE

The State then offered in evidence the Marriage Certificate in words and figures as follows:

99133 33251

STATE OF NEVADA,
County of Clark, ss:

This Is To Certify, That the undersigned C. H. Sloan did on the 4th day of Oct. A. D. 1940, join in lawful wedlock O. B. Williams of Las Vegas, State of Nevada, and Lillie Esther Shaver of Las Vegas, State of Nevada, with their

mutual consent, in the presence of Mrs. Jack Pembroke and Mrs. Charles H. Sloan who were witnesses.

C. H. Sloan, Baptist Minister.

Mrs. Jack Pembroke, Mrs. Charles H. Sloan, Witnesses.

Recorded at the request of C. H. Sloan. Filed Oct. 8, 1940.

David Farnsworth, County Recorder.

RECORDER'S CERTIFICATION.

STATE OF NEVADA,
County of Clark, ss:

I, David Farnsworth, the duly elected, qualified, and acting County Recorder, in and for the County of Clark, State of Nevada, do hereby certify and declare the above (attached) to be a full, true and correct copy of that certain Marriage Certificate of Record in Book 17 of Mar. Cert., Page 369, Clark County, Nevada, Records.

[fol. 9] Witness my hand and official seal this 17th day of February, A. D. 1941.

David Farnsworth, John Beodle, Dep. (Seal.)

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record, having a seal, which is annexed hereto), do hereby certify that David Farnsworth, whose name is subscribed to the foregoing certificate was, at the time of signing the same, the duly elected, qualified and acting County Recorder in and for the County of Clark, State of Nevada, and authorized to execute said certificate. And I do further certify that the signature of the said David Farnsworth, appearing upon the foregoing certificate is genuine.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, this 18th day of February, 1941.

Lloyd S. Payne (Signed). (Seal.) County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

STATE OF NEVADA,
County of Clark, ss:

I, George E. Marshall, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify that Lloyd S. Payne is County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the [fol. 10] County of Clark (which Court is a Court of Record having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said Lloyd S. Payne, as such officer; that the seal annexed thereto is the seal of said District Court; that said Lloyd S. Payne, as such Clerk, is the proper officer to execute the said certificate of attestation, and that such attestation is in due form according to the laws of the State of Nevada.

In Witness Whereof, I have hereunto set my hand in my official character as such Judge, at the City of Las Vegas, County and State aforesaid, this 18th day of February, A. D., 1941.

George E. Marshall (Signed), Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark.

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record, having a seal, which is annexed hereto), do hereby certify that George E. Marshall, whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the District Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In Witness Whereof, I have hereunto set my hand and annexed the seal of the District Court of the Eighth Judicial

District of the State of Nevada, in and for the County of Clark, this 18th day of February, 1941.

[fol. 11] Lloyd S. Payne (Signed). (Seal.) County Clerk of the County of Clark, State of Nevada, and Ex-Officio Clerk of the District Court of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark.

L. W. PAYNE testified for the State: I was a Deputy Sheriff in 1940. I went to Pineola, North Carolina, and had a conversation with O. B. Williams and Lillie Shaver Hendrix some time in August, 1940.

Q. What was the conversation you had with them?

Objection by defendants overruled.
Exception by each defendant.

Exception No. 5.

A. It was in Newland where we first saw them. Mr. Teague spoke to them.

Q. Tell what was said?

Objection by defendants—overruled.
Exception by defendants.

Exception No. 6.

A. Charlie Teague was the one that done the talking to them.

Defendants object—overruled—exception.

Exception No. 7.

Q. Was he an officer?

A. Yes, and he and I were together and he spoke to Mrs. Williams and she said her name was Mrs. Williams now.

Defendants object—overruled—exception.
Motion to strike denied—defendants except.

Exception No. 8.

Q. Was the defendant, O. B. Williams, present and close enough to hear her at that time?

Defendants object—overruled—exception.

A. Yes.

Defendants object to each question and answer in regard to this conversation and move to strike the same from the [fol. 12] record; denied and each defendant excepts.

Exception No. 9.

(Witness resumed:) We left Newland. Mr. and Mrs. Williams and Charlie Teague and I and went in an automobile to Pineola.

Q. Tell what all happened when you got to Pineola?

Defendants object—overruled—exception.

Exception No. 10.

A. When we got to Pineola we stopped there where they said they lived.

Objection by defendants—sustained as to "they said."

Q. Who said that?

A. Mr. and Mrs. Williams. We were all together.

Objection by defendants—overruled.

Exception No. 11.

Q. What did Mr. O. B. Williams say to you there?

Defendants object—overruled—exception.

Exception No. 12.

A. Mrs. Williams got out of the car and went down to the house where she and Mr. Williams lived to get some things and she was gone a right long while and Mr. Williams and myself stayed in the car and she said she went to get

Objection by defendants—overruled—exception; motion by defendants to strike; denied; exception by defendants.

Exception No. 13.

Q. Did either of the defendants, in the presence of the other, make any statement as to where they were living at that time?

Objection by defendant—overruled.

Exception No. 14.

A. Yes.

[fol. 13] Q. What did either of them say in the presence of the other?

Objection by defendants—overruled—exception by each defendant.

Exception No. 15.

A. They said they were living there in that house right below where we stopped at Pineola. Motion to strike denied—exception.

Exception No. 16.

Pineola is in Avery County, N. C.

Q. Did either one of the defendants make any statement in the presence of the other as to how long they had been living in Pineola, Avery County, N. C.?

Defendants object—overruled—exception.

Exception No. 17.

A. I don't remember that they made any statement as to how long they had been living there.

Q. Was any other statement made by either of them in the presence of the other?

Defendants object—overruled—exception.

Exception No. 18.

A. They said that that was their home and that they were living right there below where we stopped about 200 yards from the highway.

Defendants object—overruled—exception.

Exception No. 19.

Q. Did you see any dwelling house there?

A. Yes, I saw her going down there and going into the dwelling house.

Objection by defendants and motion to strike; overruled—exception by each defendant.

Exception No. 20.

Q. You may state whether Mrs. Williams made a statement as to whether she and Mr. Williams lived there?

Objection by defendants—overruled—exception.

Exception No. 20A.

A. Yes.

[fol. 14] Question by the Court: Were all of these statements made in the presence of the other?

Objection by defendants—overruled—and the defendants each except.

Exception No. 20B.

A. Yes. I don't believe I remember anything else they said. I had gone to Nevada prior to that time. I went to Nevada and got in Las Vegas the last night of May, 1940, I think. I did not see either one of the defendants there. I did not have any conversation with either of them.

Cross-examination:

I do not mean by that to say they were not there.

Redirect examination:

I have seen O. B. Williams and Lillie Hendrix together since August, 1940 at Granite Falls several times but I don't remember how many. I have seen them riding in their car together. I couldn't say they are living together.

I. N. Vance testified: I lived in Pineola, Avery County, in the summer of 1940. I know the defendants, Mr. and Mrs. Williams. I have seen them together at Pineola. I know where their home is in Pineola. They have been living there for the last few weeks. I don't know exactly the dates but they have been away for a year or more. They are in and out of Pineola. I would say I see them coming and going together but I don't know about where they were going. No one else lives in the house except them. I judge they have owned the property two and a half or three years or possibly a little longer.

Since the defendants have been in Pineloa I have seen them riding in their car, seen them in church and passing

and re-passing. They are together about all the time. I have seen them going in and out of the dwelling. I have never heard them make any statements. I have visited their home once or twice since they moved there. They were together in the home at the times I was there. To the best of my knowledge it was about dark the times I was there. [fol. 15] I have been invited to the home by both Mr. and Mrs. Williams. I don't remember any conversation that was had at the time I would leave. They were just nice and polite and asked me to come back. I was asked to come back by both Mr. and Mrs. Williams. I was a county commissioner of Avery County at that time and hold the same position now. I live in Pineola.

Cross-examination:

I know the general reputation of these parties since they have been in our County and it is good.

T. A. Thompson testified: I lived in Pineola, Avery County, in the Summer of 1940. I know O. B. Williams and Lillie Hendrix. I believe I first knew them the latter part of 1940. I saw them in Pineola. They bought them a home there and it is right at the Baptist church. The lot joins the Baptist church lot. We built a parsonage and they live right next to the parsonage where the preacher is living. I have seen him in the preacher's house and in church and I have been in their home. They have lived there off and on to the best of my knowledge around two and a half years. No one else lives in the house except them. I have never been in their house in the night time. I have been there in the daytime and I have seen them around the church and around in the parsonage.

Q. Did you ever talk to either of them in the presence of the other when they would refer to themselves as being married?

Defendants object—overruled—exception.

Exception No. 21.

A. Yes. These defendants have been living together and for the last month or six weeks in the same house they were living in in the Fall of 1940.

Cross-examination:

I have known the general character and reputation of these parties since they have been in Pineola, and it is good.

[fol. 16] GREEN BUCHANAN testified:-I live in Pineola, Avery County, North Carolina, and I know these two defendants. I met them in 1940. I believe it was a little bit before August, 1940. I just know they have a home in Pineola and are living there together. They have been there off and on about all the time since they moved there. They have been away part of the time. They have been there something like two and a half years.

Cross-examination:

I know the general character and repufation of these parties since they have been in my county, and it is good.

L. W. PAYNE (recaled) testified on Direct Examination:

I cannot recall the exact month that Mr. Teague and myself went to Newland and had a conversation with these defendants. I know it was in the Fall of 1940.

Cross-examination:

I don't know whether I was mistaken awhile ago when I said it was in August or not but I know it was in the fall. I don't know that these people were in Nevada in August. August is not in the fall of the year but it is pretty close to it. There is no other correction I want to make in my testimony.

In response to a question by the Court, the witness stated as follows: I am not definite as to the date. I know it was in the fall but I couldn't say what month.

C. B. TEAGUE testified: I was Chief of Police in 1940. I went with Mr. Payne to Newland some time during 1940. I don't remember the exact date but it was in the fall of the year to the best of my knowledge. I saw Mr. and Mrs.

O. B. Williams. I met Mr. Williams and his wife in a cafe in Newland. Mr. Williams introduced me to his wife and we talked a little while, and I told him my business up there. Mr. and Mrs. Williams were in the car with Mr. Payne. [fol. 17] They did not get in with me. I don't recall hearing Mr. and Mrs. Williams make any statements.

It is judicially admitted in open Court that the person designated as Mrs. O. B. Wike Williams in the Indictment died on June 24, 1943.

The State Rests.

MOTION FOR JUDGMENT AS OF NONSUIT

At the close of the State's evidence the defendants, and each of them, move for judgment as of nonsuit. Motion denied and the defendants, and each of them, in apt time, except.

Exception No. 22.

DEFENDANTS' EVIDENCE

The defendants offered the following evidence:

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

v.

CARRIE ORA WILLIAMS, Defendant

COMPLAINT

The plaintiff complains of the defendant and for cause of action alleges:

1. That in the month of November 1916, in Granite Falls, State of North Carolina, the plaintiff and the defendant inter-married and ever since have been, and now are husband and wife.

2. That plaintiff is now and has been a resident of the State of Nevada for the period of more than six weeks immediately preceding the commencement of this action.

That for more than six weeks immediately preceding the commencement of this action, he has been, and now is a resident of the County of Clark, State of Nevada.

3. That during the term of said marriage the defendant [fol. 18] has been guilty of extreme cruelty toward this plaintiff, by her words, actions, and conduct;

And plaintiff therefore alleges, that during the term of said married life, the defendant has been guilty of extreme cruelty toward this plaintiff.

Wherefore, plaintiff prays judgment against the defendant dissolving the bonds of matrimony now existing between the plaintiff and the defendant, and restoring said parties to the status of single persons.

I. S. Thompson, Attorney for Plaintiff.

STATE OF NEVADA,
County of Clark, ss:

Otis Baxter Williams, being first duly sworn, deposes and says: That he is the plaintiff in the above entitled action, and that he has read his foregoing complaint and knows the contents thereof and that the same is true of his own knowledge.

Otis Baxter Williams.

Subscribed and sworn to before me, this 26th day of June, 1940. I. S. Thompson, Notary Public. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff

v.

CARRIE ORA WILLIAMS, Defendant

AFFIDAVIT FOR PUBLICATION OF SUMMONS

STATE OF NEVADA,
County of Clark, ss:

Otis Baxter Williams, being first duly sworn, deposes and says that he is the plaintiff in the above entitled suit;

that the complaint in said action has been filed in the Clerk's [fol. 19] office of the above Court and summons thereupon issued; that said action is brought to recover a judgment of the above Court, dissolving the bonds of matrimony now existing between the plaintiff and defendant, on the grounds of extreme cruelty; that such cause of action is more fully set forth in plaintiff's verified complaint on file herein, to which you are referred to for further particulars, and which is hereby made a part of this affidavit; that the defendant is a necessary and proper party defendant in this action.

That the defendant, Carrie Ora Williams, resides outside of the State of Nevada, to-wit: At Granite Falls, North Carolina, and that she is not now and cannot be found in the State of Nevada, and that defendant's present place of residence is Granite Falls, North Carolina.

Affiant therefore says, that personal service of the summons in this action cannot be made upon the defendant, Carrie Ora Williams, and prays for an order that service of the same be made by publication thereof.

Otis Baxter Williams.

Subscribed and sworn to before me this 16th day of July, 1940. I. S. Thompson, Notary Public. Seal.)

In the Eighth Judicial District Court of the State of Nevada in and for Clark County

No. 10650

Otis Baxter Williams, Plaintiff

v.

Carrie Ora Williams, Defendant

Order Directing Publication of Summons

Upon reading and filing the affidavit of Otis Baxter Williams, the plaintiff above named, and it satisfactorily appearing therefrom that the defendant, Carrie Ora Williams, resides out of the State of Nevada and at Granite Falls, North Carolina, and it also appearing from the complaint [fol. 20] herein duly verified by the plaintiff, that good

causes of action exist in this action in favor of the plaintiff, Otis Baxter Williams, and against the defendant, Carrie Ora Williams, and that the defendant, Carrie Ora Williams, is a necessary and proper party defendant thereto; and it further appearing that a summons has been issued out of said court in this cause and that personal service of the same cannot be made upon the defendant, Carrie Ora Williams, for the reasons hereinbefore contained and by the said affidavit made to appear.

On motion of I. S. Thompson, attorney for plaintiff, it is ordered that the service of the summons in this action be made upon the defendant, Carrie Ora Williams, by publication thereof in the Las Vegas Evening Review Journal, a newspaper published in the City of Las Vegas, County of Clark, State of Nevada, hereby designated as the newspaper most likely to give notice to said defendant, that said publication be made for a period of four weeks, and at least once a week during said time.

And it further in like manner satisfactorily appearing to me that the residence of said defendant is known to be at Granite Falls, North Carolina; and her postoffice address is Route 1, Granite Falls, North Carolina; It is ordered and directed that a copy of the summons and complaint in this suit be deposited in the United States Postoffice at the City of Las Vegas, County of Clark, State of Nevada, postpaid, directed to said defendant at her said postoffice address.

Dated this 18th day of July, 1940.

Roger Foley, District Judge.

In the Eighth Judicial District Court of the State of Nevada in and for the County of Clark

No. 10650

Otis Baxter Williams, Plaintiff

v.

Carrie Ora Williams, Defendant

Summons

[fol. 21] The State of Nevada Sends Greetings to Said Defendant:

You are hereby summoned to appear within ten days after the service upon you of this summons if served in said County, or within twenty days if served out of said County but within said Judicial District, and in all other cases within thirty days (exclusive of the day of service) and defend the above entitled action.

This action is brought to recover a judgment dissolving the bonds of matrimony that now exist between you and the plaintiff on the grounds of your extreme cruelty toward plaintiff, all of which will more fully appear from plaintiff's verified complaint now on file in this action, to which you are referred for further particulars.

Dated this 26th day of June, A. D. 1940.

Lloyd S. Payne, Clerk of the Eighth Judicial District Court of the State of Nevada, in and for Clark County, Nevada, by Tilla Cronick, Deputy. (Seal.)

I. S. Thompson, Attorney for Plaintiff, Rooms 5 and 6 Griffith Building, Las Vegas, Nevada.

SHERIFF'S RETURN:

STATE OF NEVADA,
County of Clark, ss:

I, J. F. Parlier, the duly elected, qualified and acting Sheriff of said County and State, do hereby certify and return that I received the within summons on the 18th day of July, A. D. 1940, and that I personally served the same upon the within-named defendant, Mrs. O. B. Williams, on the 22nd day of July, A. D., 1940 at Granite Falls, County of Caldwell, State of North Carolina, by then and there delivering to her, the said defendant personally a copy of said Summons attached to a certified copy of the complaint in the within entitled action.

Dated this 22nd day of July, A. D. 1940.

[fol. 22] J. F. Parlier, Sheriff of Caldwell, State of N. C.

STATE OF NORTH CAROLINA,
County of Caldwell, ss:

J. F. Parlier, being first duly sworn, deposes and says:

That he is and was on the day when he served the within summons a citizen of the United States over the age of 21

years, and is not a party to, Attorney in, nor has he any interest in the within entitled action; that he personally served the said sunimons upon Carrie Ora Williams, the within named defendant, on the 22nd day of July, 1940 by delivering to said defendant, on said last named day personally, in the County of Caldwell, State of North Carolina, a true copy of said summons attached to a true copy of the complaint in the within entitled action, duly certified to by the Attorney for the plaintiff therein.

J. F. Parlier.

Subscribed and sworn to before me, this 22nd day of July, 1940. F. H. Hoover, C. S. C. (Seal.)

In the Eighth Judicial District Court of the State of Nevada in and for Clark County

No. 10650

Otis Baxter Williams, Plaintiff,

v.

Carrie Ora Williams, Defendant

Decree of Divorce

The above entitled cause coming on to be heard this day in open court, before the Honorable Roger Foley, Judge presiding in said Court; present Otis Baxter Williams, in person and by his attorney, I. S. Thompson, and the Court having before it all the files, pleadings and papers in this action and being fully advised in the premises and fully satisfied that this action has been regularly commenced: [fol. 23] Finds that the plaintiff has been and now is a bona fide and continuous resident of the County of Clark, State of Nevada, and has been such resident for more than six weeks immediately preceding the commencement of this action; that the defendant has been duly and regularly served with summons in this action in the manner prescribed by law; that an order was made directing the publication of the summons in this case and that thereafter, and on the 22nd day of July, 1940 the defendant was personally served with summons in the County of Caldwell, State of

North Carolina; and that defendant's default has been entered for her failure to appear and answer plaintiff's complaint within the time allowed by law, and the defendant not having appeared for trial in said action, either in person or by attorney; that the Court has complete jurisdiction in the premises, both as to subject matter and to the parties to this action.

Now, therefore, after hearing the witnesses sworn and examined in open court, and the said cause having been submitted and the Court being fully advised in the premises and the Court having fully considered all the evidence in the case, finds that all the averments and allegations contained in plaintiff's complaint are true as therein alleged; that the plaintiff, Otis Baxter Williams, is without fault in the premises and is entitled to a Decree of Divorce from the defendant, Carrie Ora Williams, on the ground of extreme cruelty toward plaintiff.

It is therefore ordered, adjudged and decreed, that the bonds of matrimony now existing between the plaintiff, Otis Baxter Williams, and the defendant, Carrie Ora Williams, be and the same are hereby dissolved; set aside and forever held at naught; And the said parties are absolutely divorced and released from any and all marital obligations each to the other and are hereby restored to the status of single persons.

Done in open Court, this 26th day of August, 1940.

[fol. 24] Roger Foley, District Judge.

In the District Court of the Eighth Judicial District of the State of Nevada, in and for Clark County,

No. 10650

Otis Baxter Williams, Plaintiff,

v.

Carrie Ora Williams, Defendant

Judgment Roll

I, the undersigned County Clerk and Ex-Officio Clerk of the District Court of the Eighth Judicial District in and for

said County and state, do hereby certify that the foregoing is a true copy of the Judgment entered in the above entitled action recorded in Judgment Book 11 of said Court at page 172; and I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness my hand and seal of the District Court this 11th day of August, 1940.

Lloyd S. Payne, Clerk, by Sonya Worthy, Deputy.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff,

v.

CARRIE ORA WILLIAMS, Defendant

PRAECIPE FOR DEFAULT

To the Clerk of the Above Entitled Court:

The defendant above named, Carrie Ora Williams, having been duly and regularly served with process herein, and having failed to appear in said action and having failed to answer or otherwise plead herein, and more than 30 days having elapsed since said service, and being in default, you [fol. 25] are hereby requested and directed to enter the default of said defendant.

Dated this 22nd day of August, 1940.

I. S. Thompson, Atty. for Plaintiff.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10650

OTIS BAXTER WILLIAMS, Plaintiff

vs.

CARRIE ORA WILLIAMS, Defendant

DEFAULT

It appearing from the files and records in the above entitled action that Carrie Ora Williams, defendant herein, was duly served with summons on the twenty-second day of July, A. D. 1940, at the County of Caldwell, State of North Carolina, and that more than 30 days, exclusive of the day of service, have expired since said service upon the defendant, and no answer or demurrer having been filed or other defense made by defendant, and no further time having been granted, the default of Carrie Ora Williams, defendant herein, in failing to answer or make defense to plaintiff's complaint, is hereby entered.

Witness my hand and the seal of said Court, this 22nd day of August, A. D. 1940.

Lloyd S. Payne, Clerk. By: Dolores Yturri, Deputy Clerk. (Seal.)

STATE OF NEVADA,
County of Clark, ss.:

I, Lloyd S. Payne, the duly elected, qualified and acting County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify and attest the foregoing to be a full, true and correct copy of the original:

Complaint, Affidavit, for Publication of Summons, Order Directing Publication of Summons, Summons, Decree of [fol. 26] Divorce, Judgment Roll, Praecipe for Default and Default, together with the endorsements thereon, now on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the District Court of the Eighth Judicial

District of the State of Nevada, in and for the County of Clark, this 12th day of November, 1940.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark. (Seal.)

STATE OF NEVADA,
County of Clark, ss.:

I, Roger Foley, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify that Lloyd S. Payne is County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record having a seal): that the signature to the foregoing certificate and attestation is the genuine signature of the said Lloyd S. Payne, as such officer; that the seal annexed thereto is the seal of said District Court; that said Lloyd S. Payne, as such Clerk, is the proper officer to execute the said certificate of attestation, and that such attestation is in due form according to the laws of the State of Nevada.

In Witness Whereof, I have hereunto set my hand in my official character as such Judge, at the City of Las Vegas, County and State aforesaid, this 12th day of November, A. D. 1940.

[fol. 27] (Signed): Roger Foley, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark.

STATE OF NEVADA,
County of Clark, ss.:

I, Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record, having a seal, which is annexed hereto) do hereby certify that Roger Foley, whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the District Court aforesaid, and was duly commissioned, qualified and authorized by law to execute

said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, this 12th day of November, 1940.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff

vs.

THOMAS GEORGE HENDRIX, Defendant

COMPLAINT

[fol. 28] The plaintiff complains of the defendant and for cause of action alleges:

1. That on June 27, 1920, in Icard, State of North Carolina, the plaintiff and the defendant intermarried and ever since have been and are now wife and husband.

2. That plaintiff is now and has been a resident of the State of Nevada for the period of more than six weeks immediately preceding the commencement of this action.

That for more than six weeks immediately preceding the commencement of this action, she has been, and now is a resident of the County of Clark, State of Nevada.

3. That there is no issue of said marriage.

4. That the defendant has wilfully neglected for the period of over one year, immediately preceding the commencement of this action, to provide plaintiff with the common necessaries of life; although having the ability to do so; that such neglect was and is not the result of poverty on the part of the defendant, which he could not avoid by ordinary industry.

For a Second And Separate Cause Of Action against the defendant, plaintiff alleges:

5. That the allegations set forth in paragraphs I, II and III of the plaintiff's first cause of action are true and are hereby made a part of this cause of action.

6. That during the term of said marriage, the defendant has been guilty of extreme mental cruelty toward this plaintiff by his words, actions, and conduct; and plaintiff therefore alleges that during the term of said married life, the defendant has been guilty of extreme cruelty toward this plaintiff.

Wherefore, plaintiff prays judgment against the defend-[fol. 29] ant dissolving the bonds of matrimony now existing between the plaintiff and the defendant, and restoring said parties to the status of single persons.

I. S. Thompson, Attorney for Plaintiff.

STATE OF NEVADA,
County of Clark, ss.:

Lillie Esther Hendrix, being duly sworn, deposes and says, that she is the plaintiff in the above-entitled action, and that she has read the foregoing complaint and knows the contents thereof, and that the same is true of her own knowledge.

Lillie Esther Hendrix.

Subscribed and Sworn to before me this 26th day of June, 1940. I. S. Thompson, Notary Public. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff

vs:

THOMAS GEORGE HENDRIX, Defendant

AFFIDAVIT FOR PUBLICATION OF SUMMONS

STATE OF NEVADA,
County of Clark, ss.:

Lillie Esther Hendrix, being first duly sworn, deposes and says, that she is the plaintiff in the above entitled suit; that

the complaint in said action has been filed with the Clerk of the above Court and summons thereupon issued; that said action is brought to recover a judgment of the above court dissolving the bonds of matrimony now existing between the plaintiff and defendant, on the grounds of willful neglect, and extreme cruelty; that such causes of action are more fully set forth in plaintiff's verified complaint on file herein, to which you are referred to for further particulars and [fol. 30] which is hereby made a part of this affidavit; that the defendant is a necessary and proper party defendant in this action.

The defendant, Thomas George Hendrix, resides outside the State of Nevada, to-wit: at 391 Fuller Street, Akron, Ohio, and that he is not now and cannot be found in the State of Nevada, and that defendant's present place of residence is 391 Fuller Street, Akron, Ohio.

Affiant therefore says, that personal service of the summons in this action cannot be made upon the defendant, Thomas George Hendrix, and prays for an order that service of the same be made by publication thereof.

Lillie Esther Hendrix.

Subscribed and sworn to before me, this 20th day of July, 1940. I. S. Thompson, Notary Public. (Seal.)

In the Eighth Judicial District Court of the State of Nevada in and for Clark County

No. 10651

Lillie Esther Hendrix, Plaintiff

v.

Thomas George Hendrix, Defendant

Order Directing Publication of Summons

Upon reading and filing the affidavit of Lillie Esther Hendrix, the plaintiff above named and it satisfactorily appearing therefrom that the defendant, Thomas George Hendrix, resides out of the State of Nevada and at 391 Fuller Street, Akron, Ohio;

And it also appearing from the complaint herein duly verified by the plaintiff, that good causes of action exist in

this action in favor of the plaintiff, Lillie Esther Hendrix, and against the defendant, Thomas George Hendrix, and that the defendant, Thomas George Hendrix, is a necessary [fol. 31] and proper party defendant thereto; and it further appearing that a summons has been issued out of said court in this cause and that personal service of the same cannot be made upon the defendant, Thomas George Hendrix, for the reasons hereinabove contained, and by the said affidavit made to appear.

On motion of I. S. Thompson, attorney for plaintiff, it is ordered that the service of the summons in this action be made upon the defendant, Thomas George Hendrix, by publication thereof in the Las Vegas Evening Review Journal, a newspaper published in the City of Las Vegas, County of Clark, State of Nevada, hereby designated as the newspaper most likely to give notice to said defendant, that said publication be made for a period of four weeks and at least once a week during said time.

And it further in like manner satisfactorily appearing to me that the residence of said defendant is known to be at 391 Fuller Street, Arkon, Ohio. And that his postoffice address is 391 Fuller Street, Akron, Ohio; it is ordered and directed that a copy of the summons and complaint in this suit be deposited in the United States Postoffice at the City of Las Vegas, County of Clark, State of Nevada, postpaid, directed to said defendant at his said postoffice address.

Dated this 22nd day of July, 1940.

Roger Foley, District Judge.

In the Eighth Judicial District Court of the State of Nevada in and for the County of Clark

No. 10651

Lillie Esther Hendrix, Plaintiff

v.

Thomas George Hendrix, Defendant

Summons

The State of Nevada sends Greetings to said defendant:

[fol. 32] You are hereby summoned to appear within ten days after the service upon you of this summons if served in

said County, or within twenty days if served out of said County but within said Judicial District, and in all other cases within thirty days (exclusive of the day of service) and defend the above entitled action.

This action is brought to recover a judgment dissolving the bonds of matrimony that now exist between you and the plaintiff on the grounds of your willful neglect of, and your extreme cruelty toward plaintiff, all of which will more fully appear from plaintiff's verified complaint now on file in this action, to which you are referred for further particulars.

Dated this 26th day of June, A. D. 1940.

Lloyd S. Payne, Clerk of the Eighth Judicial District Court of the State of Nevada, in and for Clark County, Nevada. By: Tilla Cronick, Deputy. (Seal.)

I. S. Thompson, Attorney for Plaintiff, Rooms 5 and 6 Griffith Building, Las Vegas, Nevada.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff

v.

THOMAS GEORGE HENDRIX, Defendant

AFFIDAVIT OF MAILING COPY OF SUMMONS AND COMPLAINT

George W. Thompson, of said county, being duly sworn, says that he is over the age of 21, and is not a party to the above-entitled action.

That on the 26th day of June, 1940 the complaint in said action was filed, and that thereafter an order was made by the court for the publication of the summons in said action, and also a further order that a copy of said complaint and a [fol. 33] copy of said summons should be deposited in the United States Postoffice, at Las Vegas, in said County and State, directed to the defendant, Thomas George Hendrix,

in said action, at his place of residence, to-wit: No. 391 Fuller Street, in the City of Akron, County of Summit, State of Ohio; that to-wit: on the 10th day of August, 1940 and in pursuance of the said order of the Court he, the said affiant, deposited in the United States Postoffice, at the City of Las Vegas, County of Clark, State of Nevada, a true copy of the said summons attached to a true copy of the complaint duly certified to by the attorney for the plaintiff, enclosed in a sealed envelope, directed to Thomas George Hendrix, the said defendant, at No. 391 Fuller Street, in the City of Akron, County of Summit, State of Ohio, the place of his residence as aforesaid, and paid the postage thereon in advance; and that there is a regular communication by the United States mails from said Postoffice of deposit thereof, as aforesaid, to said defendant's said place of residence.

George W. Thompson.

Subscribed and Sworn to before me, this 10th day of August, 1940. I. S. Thompson, Notary Public. (Seal.)

STATE OF NEVADA,
County of Clark, ss.:

Dick Lochrie, being first duly sworn, deposes and says:

That he is foreman of the Las Vegas Evening Review Journal, a daily newspaper of general circulation, printed and published at Las Vegas, in the County of Clark, State of Nevada, and that the attached was continuously published in said newspaper for a period of five weeks from August 7, 1940 to September 4, 1940 inclusive, being the issues of said newspaper for the following dates, to-wit: August 7th, 14th, 21st, 28th, September 4. That said newspaper was regularly issued and circulated on each of the dates above named.

Dick Lochrie.

[fol. 34] Subscribed and sworn to before me this 13th day of Sept. 1940. A. E. Cahlan, Notary Public in and for Clark County, Nevada. My commission expires; Jan. 12, 1943. (Seal.)

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff

v.

THOMAS GEORGE HENDRIX, Defendant

SUMMONS

The State of Nevada Sends Greetings to Said Defendant:

You are hereby summoned to appear within ten days after the service upon you of this summons if served in said County, or within twenty days if served out of said County but within said Judicial District, and in all other cases within thirty days (exclusive of the day of service) and defend the above entitled action.

This action is brought to recover a judgment dissolving the bonds of matrimony that now exist between you and the plaintiff on the grounds of your willful neglect of, and your extreme cruelty toward plaintiff, all of which will more fully appear from plaintiff's verified complaint now on file in this action, to which you are referred for further particulars.

Dated this 26th day of June, A. D. 1940.

Lloyd S. Payne, Clerk of the 8th Judicial Dist. Court of the State of Nevada, in and for Clark County, Nevada. By: Tilla Cronick, Deputy. (Seal.)

I. S. Thompson, Rooms 5 and 6 Griffith Building, Las Vegas, Nevada, Atty. for Plaintiff, Aug. 7, 14, 21, 28, Sept. 4.

[fol. 35] Filed Oct. 4, 1940. Lloyd S. Payne, Clerk. By Dolores Yturri, Deputy.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

v.

THOMAS GEORGE HENDRIX, Defendant

DECREE OF DIVORCE

The above entitled cause coming on regularly for hearing this day, in open court, before the Honorable Roger Foley,

Judge of said court, presiding; Present Lillie Esther Hendrix, plaintiff, in person and by her attorney, I. S. Thompson, the defendant not appearing and the Court having before it all the files, pleadings and papers in the action and being fully advised in the premises, finds that this action has been regularly commenced; and that the plaintiff is now and has been a bona fide resident of the County of Clark, State of Nevada, for more than six weeks immediately preceding the commencement of this action; that the defendant has been duly and regularly served with summons in this action in the manner prescribed by law and the order of this court; that after the order was made directing the publication of the summons, the plaintiff used every effort to locate the defendant in order to serve the summons upon him personally but was unable to do so because of his dodging service; that the service of summons was made by publication in the Las Vegas Evening Review Journal, for a period of four weeks and at least once a week during said time; and the default of the defendant has been duly entered for failure to answer plaintiff's complaint within the time allowed by law; and the defendant not having appeared for trial of said action either in person or by attorney and that the court has complete jurisdiction of the matter both as to the subject matter and the parties to the action.

[fol. 36] Now, Therefore, after hearing the witnesses sworn and examined in open court and the said cause having been submitted and the Court being fully advised in the premises and having fully considered all the evidence in the case, finds that all the averments contained in plaintiff's complaint are true as therein alleged; that the plaintiff, Lillie Esther Hendrix, is without fault in the premises, and is entitled to a Decree of Divorce from the defendant, Thomas George Hendrix, on the grounds of his willful neglect of and extreme cruelty toward the plaintiff.

It is Therefore Ordered, Adjudged and Decreed that the contract of marriage now existing between the plaintiff, Lillie Esther Hendrix, and the defendant, Thomas George Hendrix, be, and the same is hereby dissolved, set aside and forever held at naught:

And the said parties are absolutely divorced and released from any and all marital obligations each to the other, and are hereby restored to the status of single persons.

Done in open Court, this 4th day of October, 1940.

Roger Foley, District Judge.

IN THE DISTRICT COURT OF THE EIGHTH JUDICIAL DISTRICT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

v.

THOMAS GEORGE HENDRIX, Defendant

JUDGMENT ROLL

I, the undersigned County Clerk and Ex-Officio Clerk of the District Court of the 8th Judicial District in and for said County and State, do hereby certify that the foregoing is a true copy of the Judgment entered in the above entitled action recorded in Judgment Book 11 of said court [fol. 37] at pages 228-9; and I further certify that the foregoing papers, hereto annexed, constitute the Judgment Roll in said action.

Witness my hand and seal of the District Court this 8th day of October, 1940.

Lloyd S. Payne, Clerk, by Lalla Cronick, Deputy.
(Seal.)

IN THE EIGHTH DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

v.

THOMAS GEORGE HENDRIX, Defendant

PRAECIPE FOR DEFAULT

To the Clerk of the Above Entitled Court:

The defendant above named, Thomas George Hendrix, having been duly and regularly served with process herein,

and having failed to appear in said action and having failed to answer or otherwise plead herein, and more than 30 days having elapsed since said service, and being in default, you are hereby requested and directed to enter the default of said defendant.

Dated this 4th day of October, 1940.

I. S. Thompson, Attorney for Plaintiff.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

v.

THOMAS GEORGE HENDRIX, Defendant

DEFAULT

It appearing from the files and records in the above entitled action that Thomas George Hendrix, defendant herein, was duly served with Summons by Publication, and that more than 30 days, exclusive of the day of service, [fol. 38] have expired since said service upon the defendant, and no answer or demurrer having been filed or other defense made by defendant, and no further time having been granted, the default of Thomas George Hendrix defendant herein in failing to answer or make defense to plaintiff's complaint, is hereby entered.

Witness my hand and the seal of said Court this 4th day of October, A. D. 1940.

Lloyd S. Payne, Clerk. By Dolores Yturri, Deputy Clerk.

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

v.

THOMAS GEORGE HENDRIX, Defendant

AFFIDAVIT AS TO RESIDENCE OF THE PLAINTIFF

STATE OF NEVADA,
County of Clark, ss:

Lillie Roesselet, being first duly sworn, deposes and says that she is and was, on all the dates hereinafter mentioned, over the age of 21 years; that she is not a party to, nor has she any interest in the above entitled suit; that she resided in the State of Nevada; County of Clark, during the dates and times hereinafter mentioned. That on May 15, 1940 she was residing in, and conducting the Alamo Auto Court on the highway leading from Los Angeles, California, to Las Vegas, Nevada, called the Los Angeles Highway; that on said last named date Lillie Esther Hendrix, the plaintiff above named, came there to live, rented a room and is still living there; that said Lillie Esther Hendrix was present every day, at said place, from the date she came there, May 15, 1940 up to and including June 26, 1940.

Lillie Roesselet.

[fol. 39] Subscribed and sworn to before me, this 16th day of September, 1940. I. S. Thompson, Notary Public. (Seal.)

PLAINTIFF'S EXHIBIT 1—Filed October 4, 1940

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

v.

THOMAS GEORGE HENDRIX, Defendant

AFFIDAVIT OF NON-MILITARY SERVICE OF DEFENDANT

STATE OF NEVADA,
County of Clark, ss:

Lillie Esther Hendrix, being first duly sworn, deposes and says, that she is above the age of majority and is the plaintiff in the above entitled suit and the wife of Thomas George Hendrix, the defendant in the said suit and has been such for more than 20 years last past; that he is above 45 years of age and not subject to draft under the laws of the United States; that she knows of her own knowledge that said Thomas G. Hendrix, defendant, is not now and has not been at any time since 1920, in the military service of the United States or in the militia of the State of North Carolina, where he has resided since 1920, or in the militia of any other state; that he is not now, nor has he been since said marriage to plaintiff, in the service of the United States government in any capacity whatsoever.

Lillie Esther Hendrix.

Subscribed and sworn to before me, this first day of October, 1940. I. S. Thompson, Notary Public. (Seal.)

[fol. 40] IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR CLARK COUNTY

No. 10651

LILLIE ESTHER HENDRIX, Plaintiff,

v.

THOMAS GEORGE HENDRIX, Defendant

EVIDENCE

Before Hon. Roger Foley, District Judge, 9:45 A. M., October 4, 1940.

I. S. Thompson, Esq., Attorney for Plaintiff.

Complaint was filed June 26, 1940. Affidavit and Order for Publication on file. Summons returned. Affidavit of Non-Military Service of Defendant on file. Default entered October 4, 1940.

LILLIE ESTHER HENDRIX was called as a witness in her own behalf, and after being first duly sworn, was examined by Mr. Thompson and testified as follows:

Q. Your name is Lillie Esther Hendrix?
A. Yes.
Q. You are the plaintiff in this case?
A. Yes.
Q. The defendant, Thomas George Hendrix, is your husband?
A. Yes.
Q. You were married June 27, 1920 at Icard, North Carolina?
A. Yes.
Q. Where do you reside?
A. Las Vegas, Nevada.
Q. Las Vegas, Clark County, Nevada?
A. Yes.
Q. You filed your complaint on June 26th, 1940, had you resided here a full six weeks prior to that time?
A. Yes.
Q. When did you come to Clark County, Nevada?
A. May 15, 1940.

Q. What was your object and intention in coming here [fol. 41] at that time?

A. To establish a residence.

Q. Did you establish a residence?

A. Yes.

Q. And that residence was an indefinite permanent residence?

A. Yes, sir.

Q. And from May 15, 1940 down to the day you filed your complaint were you absent from the county or the state?

A. No, sir.

Q. You were here every day?

A. Yes, sir.

Q. Where did you reside during that time?

A. At the Alamo Court.

Q. You were there until after you filed your complaint?

A. Yes.

Q. Are there any children of this marriage?

A. No, sir.

Q. In the fourth paragraph you allege the defendant has wilfully neglected for a period of over one year immediately preceding the commencement of this action to provide plaintiff with the common necessaries of life, although having the ability to do so, and that such neglect is not and was not the result of poverty on the part of the defendant which he could not avoid by ordinary industry—is that true?

A. Yes.

Q. During the past year was your husband well and healthy?

A. Yes.

Q. And able to work?

A. Yes.

Q. And able to earn a living for you and he?

A. Yes.

Q. And he didn't do it?

A. Never.

Q. The sixth paragraph of the complaint alleges that during the term of said marriage the defendant has been guilty of extreme mental cruelty towards this plaintiff by his words, actions and conduct; plaintiff, therefore, alleges that during said married life defendant has been guilty

[fol. 42] of extreme cruelty towards this plaintiff—is that true?

A. Yes.

Q. Now, I will ask you what was his actions toward you when he was home, was he cheerful?

A. No.

Q. Was he moody?

A. Yes.

Q. Did he talk to you or speak to you?

A. Not often.

Q. How about you speaking to him, did he always answer you?

A. Well, most of the time it was a nod or a shake of the head.

Q. There was nothing cheerful about him at all?

A. No, there was not.

Q. Now, when the bills would come in at the end of the month or at any time they would be paid, would he pay them?

A. No, sir, he didn't.

Q. Did your mother and father often have to pay them?

A. They paid money for me.

Q. I will ask you how did these things affect you mentally, his actions in regard to failure to provide for you and these bills coming in, and his moody disposition.

A. It worried me 'till I didn't care whether I lived or did anything.

Q. Did it cause you great mental worry?

A. It certainly did.

Q. And cause you much humiliation?

A. Certainly did.

Q. I will ask you now if you made every effort to get personal service upon the defendant in this case?

A. Yes, I have.

Q. Now, just prior to the commencement of this suit, did you have your attorney write him in regard to the matter?

A. Yes.

Q. And did you ever see that letter or copy of the letter?

A. Yes.

Q. And in the last paragraph after reciting that you [fol. 43] were bringing a suit "Please indicate your willingness to sign such an appearance when it comes to you

by mailing the enclosed postal card." Did you ever see the postal card that was sent in that letter?

A. Yes.

Q. Did he sign that postal card?

A. Yes, sir.

Q. And it was sent to your attorney?

A. Yes, sir.

Q. Do you know whether or not he employed an attorney in North Carolina?

A. Yes.

Q. And a letter came from the attorneys?

A. Yes.

Q. Have you got their names?

A. Yes.

Q. What were their names?

A. L. M. Abernathy.

Q. Abernathy & Caldwell?

A. Mr. Abernathy was the man. Mr. Caldwell is with him.

Q. So your husband had full knowledge of the suit?

A. Yes, he did.

Q. Just before filing your complaint you sent an appearance to him?

A. Yes.

Q. Where he lived in North Carolina?

A. Yes.

Q. You also sent one to Akron, Ohio?

A. Yes.

Q. And one to Darby, North Carolina?

A. Yes.

Q. These were the different places where he was traveling around?

A. Yes.

Q. Did you enclose any money in any of them?

A. Yes.

Q. A dollar in one and fifty cents in another?

A. Yes.

Q. And the purpose of that was to pay the Notary fee?

A. Yes.

Q. Did he ever return that?

A. No.

[fol. 44] Q. And after you had sent the papers to the Sheriff, the summons to be served?

A. Yes.

Q. And the Sheriff couldn't find him?
A. No.

O. B. Williams was called as a witness on behalf of the plaintiff, and after being first duly sworn, was examined by Mr. Thompson and testified as follows:

Q. Will you give your name to the reporter?
A. O. B. Williams.
Q. Where do you live?
A. Clark County, Nevada.
Q. Do you know the plaintiff in this action?
A. Yes, sir.
Q. Do you know whether or not she resided here a full six weeks prior to the commencement of the action?
A. She did.
Q. She testified that she came here——

The Court: I wish the witness be asked whether he knows of his own knowledge of the date.

By Mr. Thompson:

Q. Where were you living on the 15th day of May, 1940?
A. At the Alamo Court, Las Vegas.
Q. When did you first see her at that Court?
A. May 15, 1940.
Q. So that she lived there at that Alamo Court until the day she filed her complaint?
A. Yes, sir.
Q. You saw her every day?
A. Yes, sir.

The Court: That's just the thing I wanted to avoid. I don't want the witness led in regard to the date of residence.

Q. Have you any independent recollection of that, or was it suggested to you by counsel?
A. No, I know the date.
Q. Did you make any record of it?
A. (No response.)

By Mr. Thompson, to the plaintiff:

Q. I will ask you if the landlady who runs the Alamo [fol. 45] Court is here now?

A. No, she is not.
Q. Where did she go?
A. To California.
Q. I will ask you who was the lady who rented the place?
A. Mrs. Lillie Rosetti.

Mr. Thompson: I will offer in addition to Mr. Williams' testimony, the affidavit of Lillie Rosetti, who rented the place, and who is absent from the place.

The Court: It may be admitted in connection with the testimony of the witness.

By the Court:

Q. You are satisfied you first met the lady on the date you testified?
A. Yes.

The Court: Decree to the plaintiff dissolving the marriage between the parties.

I hereby certify that the foregoing is a full, true and correct transcript of my shorthand notes taken in said action.

Marguerite Byler, Court Reporter.

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, the duly elected, qualified and acting County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify and attest the foregoing to be a full, true and correct copy of the original: Complaint, Affidavit for Publication of Summons, Order Directing Publication of Summons, Summons, Affidavit of Mailing Copy of [fol. 46] Summons and Complaint, Affidavit of Publication, Decree of Divorce, Judgment Roll, Praecipe for Default, Default, Affidavit as to Residence of Plaintiff, Affiadvit of Non-Military Service of Defendant, Reporter's Transcript in the case entitled: Lillie Esther Hendrix, Plaintiff v. Thomas George Hendrix, Defendant, #10651, together with the endorsements thereon, now on file in my office, and that I have carefully compared the same with the original.

In witness whereof, I have hereunto set my hand and annexed the Seal of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, this 23rd day of November, 1940.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark.

STATE OF NEVADA,
County of Clark, ss:

I, Roger Foley, Judge of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark, do hereby certify that Lloyd S. Payne is County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record having a seal): that the signature to the foregoing certificate and attestation is the genuine signature of the said Lloyd S. Payne, as such officer: that the seal annexed thereto is the seal of said District Court; that said Lloyd S. Payne, as such clerk, is the proper officer to execute the said certificate of attestation, and that such attestation is in due form according to the laws of the State of Nevada.

In witness whereof, I have hereunto set my hand, in my official character as such Judge, at the City of Las Vegas, [fol. 47] County and State aforesaid, this 23rd day of November, A. D., 1940.

Roger Foley, Judge of the District Court of the 8th Judicial District of the State of Nevada, in and for the County of Clark.

STATE OF NEVADA,
County of Clark, ss:

I, Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the 8th Judicial District of the State of Nevada, in and for the County of Clark (which Court is a Court of Record, having a seal, which is annexed hereto) do hereby certify that Roger Foley, whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the District Court aforesaid, and

was, duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In witness whereof, I have hereunto set my hand and annexed the seal of the District Court of the 8th Judicial District of the State of Nevada, in and for the County of Clark, this 23rd day of November, 1940.

Lloyd S. Payne, County Clerk of the County of Clark, State of Nevada, and ex-officio Clerk of the District Court of the Eighth Judicial Dist. Court of the State of Nevada, in and for the County of Clark. (Seal.)

Exemplified certified copy of divorce proceedings entitled Lillie Esther Hendrix v. Thomas George Hendrix, from Clark County State of Nevada. (Admitted in evidence.)

STIPULATION AS TO CERTAIN FACTS

It is judicially admitted in open Court by all parties, that the person designated in the certified copy of the record [fol. 48] from the State of Nevada as Carrie Ora Williams is the same person as the person designated in the indictment as Mrs. O. B. Wike Williams, and that the person designated in the certified copy of the Supreme Court as Lillie Esther Hendrix is the same person as the person designated in the indictment as Lillie Shaver Hendrix, and that the person designated in the same record as Thomas George Hendrix is the same person as the witness, Tom Hendrix.

It is further stipulated in open Court by all parties that the party designated in the record from Clark County, Nevada as Otis Baxter Williams is the same person as the defendant, O. B. Williams.

I. S. Thompson, Attorney at Law, Rooms 5 and 6 Griffith Bldg., Las Vegas, Nevada—Dear Sir: Upon receipt of the original appearance, I will sign the same.

(Signed) Thomas Hendrix.

Defendants rest and renew their motion for judgment as of nonsuit; motion denied; defendants, and each of them, except.

At the close of all of the evidence, the defendants, and each of them, renew their motion for judgment as of non-

suit upon the grounds set forth in a written motion which is as follows:

IN THE SUPERIOR COURT OF CALDWELL COUNTY

STATE OF NORTH CAROLINA

v.

O. B. WILLIAMS and LILLIE SHAVER HENDRIX

MOTION FOR JUDGMENT AS OF NONSUIT

The defendants, and each of them, at the close of the evidence for the State moves the Court that a judgment as of nonsuit be entered in the above entitled matter, and would respectfully show the following:

[fol. 49] 1. That the State has offered no competent evidence establishing fraud in the establishment of their respective residences in the State of Nevada so as to deprive the Nevada courts of jurisdiction of the divorce action instituted in said courts by the defendants herein, the plaintiffs in the Nevada actions; that if such evidence had been adduduced it is incompetent in this cause of action for the reason that the judgments of the Nevada courts cannot be collaterally attacked; that the only remedy would be by motion in the cause in the courts of Nevada where said judgments were rendered.

2. That the portion of Section 4342 of the North Carolina Code 1939 applicable to the offense with which the defendants stand charged is unconstitutional and in violation of Amendment XIV to the Constitution of the United States in that the North Carolina Legislature attempts under and and by virtue of the provisions of said statute to extend the legislative powers of the State of North Carolina beyond the borders of said State and within the political and judicial domain of every other State and decree what shall be lawful divorce decrees and marriages within those States; that the effect of said statute if declared to be constitutional and enforceable will tend to freeze the citizenship of the various States within their respective borders and prevent the free and untrammeled passing and repassing of the citizens of the United States into and from the various States of the Union, all of which is in violation of Amendment XIV of the United States Constitution.

3. That the Supreme Court of North Carolina, having assigned no errors in ordering a new trial in the Superior Court of Caldwell County, there is nothing for the Court to try; that all matters and things have been heretofore adjudicated in the former trial and that such matters and things having been adjudicated and the judgment of the Supreme Court of North Carolina having been reversed by [fol. 50] the Supreme Court of the United States, the opinion of the Supreme Court of the United States is now the law of the case; and *Haddock* v. *Haddock* having been specifically overruled, there is no law upon which to base either a new trial or a conviction of these defendants.

4. That North Carolina is obliged to give full faith and credit to divorce decrees regular on their face and obtained in accordance with the laws of Nevada under the full faith and credit clause of the United States Constitution, Article IV, Section 1.

Wherefore, the defendants, through their counsel, pray the Court that a judgment as of nonsuit be entered and that they go hence without day.

W. H. Strickland, Attorney for Defendants.

Motion denied with respect to each portion of said motion; the defendants, and each of them, in apt time, except.

Exception No. 23.

IN SUPERIOR COURT OF CALDWELL COUNTY

JUDGE'S CHARGE

Gentlemen of the Jury: The defendants, O. B. Williams and Lillie Shaver Hendrix, or Lillie Shaver Williams, are on trial under a Bill of Indictment which charges them with the crime of bigamous cohabitation.

Under the bill of indictment and under the evidence in this case, you may return either one of two different verdicts as to each of the defendants. You may return a verdict finding a particular defendant guilty or a verdict finding such defendant not guilty, depending entirely on which one of such two verdicts you find to be warranted by the law and the evidence in the case.

Answering the charges preferred against them by the State, the defendants have pleaded not guilty and thereby

have denied that they are guilty of the crime with which [fol. 51] they stand charged.

The defendants not only plead not guilty, but when they come into this court and are put upon trial, they are presumed by the law itself to be innocent of the charge set forth in the bill of indictment. This presumption of innocence is a shield or protection which the law throws around every person accused of crime, and this presumption of innocence surrounds an accused at all stages of his trial unless and until the "State by competent evidence rebuts such presumption by satisfying the trial jurors beyond a reasonable doubt that the accused is guilty."

The Court charges you that it is your duty to give to each of the defendants the full benefit of the presumption of innocence, and that you cannot convict a particular defendant of the charge preferred by the State against such defendant unless the State satisfied you beyond a reasonable doubt from the testimony that such particular defendant is guilty of such charge. "In other words, the burden rests upon the State in this case to prove the guilt of a particular defendant beyond a reasonable doubt from the evidence before you can convict such defendant of the crime with which such defendant stands charged."

A reasonable doubt is an actual, honest and substantial misgiving or doubt of guilt, reasonably arising from the evidence or want of evidence, and not a mere possible, captious or ill-founded doubt. When it is said that the trial jurors in a criminal action must be satisfied of the guilt of the accused beyond a reasonable doubt before they can return a verdict of guilty, it is meant that they must be fully satisfied or entirely convinced or satisfied to a moral certainty of the truth of the charges.

If, after considering, weighing, and comparing all of the evidence in the criminal action, the jury can say that they [fol. 52] have an abiding conviction to a moral certainty in the truth of the charge, then they are satisfied beyond a reasonable doubt, and it is their duty to convict.

On the contrary, however, if, after considering, weighing, and comparing all of the evidence in the criminal action, the minds of the jurors are left in such condition that they cannot say that they have an abiding faith to a moral certainty in the guilt of the accused, then they are not satisfied beyond a reasonable doubt, and it is their duty to give the

accused the benefit of such doubt and to acquit the accused.

Under the law, it is my duty as trial Judge to decide all questions of law and to declare and explain to you the law arising in the case.

It is your duty as trial jurors to accept the law as it is given to you by the trial Judge and to remember and consider all the evidence in ths case in the light of the Court's instructions upon the law and to declare by your verdict what the truth is with respect to the disputed questions of fact.

The law expressly forbids the trial judge to express any opinion as to whether any fact is fully or sufficiently proven. I, therefore, charge you that you are not to consider anything which I may have said in ruling upon matters of evidence, or anything which I may say during the course of this charge, as the expression of any opinion as to any question of fact.

(A) "The crime of bigamous cohabitation was created by a statute enacted by the General Assembly of this State in 1913. This statute is now embodied in Section 4342 of the Consolidated Statutes of North Carolina. Insofar as the same is germane to this case, Section 4342 of the Consolidated Statutes reads as follows: 'If any person, being married, shall contract a marriage with any other person outside of this State, which marriage would be punishable [fol. 53] as bigamous if contracted within this State, and shall thereafter cohabit with such person in this State, he shall be guilty of a felony and shall be punished as in cases in bigamy. Nothing contained in this section shall extend to any person marrying a second time who at the time of such second marriage shall have been lawfully divorced from the bond of the first marriage.'" (B)

Defendants except to the foregoing portion of the charge between the letters (A) and (B).

Exception No. 24.

(C) "A person commits the crime of bigamous cohabitation under this statute if he does both of the following acts under the following circumstances: First: If he marries a second time outside of the State of North Carolina while his spouse by a former marriage is still alive and the former marriage is still in force; and, Second, if he

thereafter cohabits with the spouse by the alleged second marriage in the State of North Carolina." (D)

Defendants except to foregoing portion of the charge between the letters (C) and (D).

Exception No. 25.

(E) "Where the State seeks the conviction of an accused upon a charge of bigamous cohabitation, the State has the burden of proving beyond a reasonable doubt from the evidence four facts, namely: (1) That the Accused was lawfully married to one person; (2) That thereafter the accused contracted a second marriage with another person outside of North Carolina; (3) That the spouse of the accused by the former marriage was living at the time the second marriage was contracted by the accused outside of North Carolina; (4) That after contracting the second marriage outside of North Carolina, the accused cohabited in North Carolina with the person with whom he had contracted such second marriage.

"Where these four facts are shown by the State beyond a reasonable doubt from the testimony in a prosecution [fol. 54] for bigamous cohabitation, the State has made out what the law calls a prima facie case, and is not bound to go further and prove that the former marriage has not been dissolved by divorce, knowledge as to such dissolution being peculiarly within the cognizance of the accused." (F)

Defendants except to the foregoing portion of the charge between the letters (E) and (F).

Exception No. 26.

When the State proves the four facts enumerated by the Court as constituting a prima facie case beyond a reasonable doubt from the testimony, (G) "the burden then devolves upon the accused to satisfy the trial jury, not beyond a reasonable doubt nor by the greater weight of the evidence, but simply to satisfy the trial jury from facts or circumstances offered in evidence either by the State or by the accused or by a co-defendant, that the accused was lawfully divorced from his first spouse at the time of his second marriage, if the accused in the prosecution for bigamous cohabitation relies upon the dissolution of his first marriage by divorce as a defense." (H).

Defendants except to the foregoing portion of the charge between the letters (G) and (H).

Exception No. 27.

Now, the Court has given you certain general principles of law applicable to prosecutions for bigamous cohabitation. The Court desires to instruct you as to making special applications of these general principles of law to the evidence in this case, so that you may arrive at a verdict by considering the evidence in the light of the Court's instructions upon the law.

(I) "The Court instructs you that in the prosecution of the defendant, O. B. Williams, upon the charge of bigamous cohabitation, the law casts upon the State the burden of showing four things beyond a reasonable doubt from the evidence, in order to constitute a prima facie case as against [fol. 55] the defendant, O. B. Williams. These four things are as follows: (1) That the defendant, O. B. Williams, a man, was lawfully married to Mrs. O. B. Wike Williams, a woman, before the times named in the bill of indictment; (2) That after his marriage to Mrs. O. B. Wike Williams, namely, on or about the 4th day of October 1940, the defendant, O. B. Williams, contracted a marriage with the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, a woman, in the State of Nevada; (3) That at the time the defendant, O. B. Williams, contracted the alleged marriage with Lillie Shaver Hendrix or Lillie Shaver Williams in the State of Nevada, Mrs. O. B. Wike Williams, his wife by his former marriage, was still living; and (4) That after the defendant, O. B. Williams, contracted the alleged marriage with his co-defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, in the State of Nevada, the defendant, O. B. Williams and his co-defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, cohabited together in the State of North Carolina." (J)

Defendants except to the foregoing portion of the charge between the letters (I) and (J).

Exception No. 28.

If the State should fail to prove beyond a reasonable doubt from the evidence that each and every one of these four facts co-existed with respect to the defendant, O. B. Williams, then it would be your duty to return a verdict of not guilty as to the defendant, O. B. Williams.

(K) "If the State, however, should satisfy you beyond a reasonable doubt from the evidence in this case that each and every one of these four things existed in the case of

O. B. Williams, then it would be your duty to return a verdict finding the defendant, O. B. Williams, guilty of bigamous co-habitation, as charged in the bill of indictment, unless the defendant O. B. Williams, should satisfy you [fol. 56] from facts or circumstances offered in evidence either by the State or by himself or by his co-defendant, that at the time of his alleged marriage to his co-defendant in the State of Nevada, he was lawfully divorced from the bond of his former marriage to Mrs. O. B. Wike Williams, and to do that, upon such finding being made by you, the defendant, O. B. Williams, would have to satisfy you from facts or circumstances offered in evidence either by the State or by himself or by his co-defendant, that at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County entered the decree of divorce in the suit therein instituted between Otis B. Williams and his alleged first wife, Mrs. O. B. Wike Williams, the defendant, O. B. Williams, had his domicile in the State of Nevada." (L)

Defendants except to the foregoing portion of the charge between the letters (K) and (L).

Exception No. 29.

If the State should satisfy you beyond a reasonable doubt from the evidence that all of the four propositions enumerated by the Court as necessary to constitute a prima facie case as against the defendant, O. B. Williams, existed as to the defendant, O. B. Williams.

(M) "and if the defendant, O. B. Williams, should satisfy you from facts or circumstances in evidence that at the time the Court in Nevada rendered the alleged decree of divorce set forth in the certified copy of the record from the State of Nevada that he, O. B. Williams, had his domicile in the State of Nevada, then it would be your duty to return a verdict of not guilty as to the defendant, O. B. Williams." (N)

Defendants except to the foregoing charge between the letters (M) and (N).

Exception No. 30.

If the State should satisfy you beyond a reasonable doubt from the testimony in this case that each and everyone of the four propositions stated by the Court as being neces- [fol. 57] sary to constitute a prima facie case as against the

defendant, O. B. Williams, co-existed with respect to the defendant, O. B. Williams,

(O) "and the defendant, O. B. Williams, should fail to satisfy you from facts or circumstances in evidence that at the time of the rendition of the alleged decree of divorce in the suit between O. B. Williams and his alleged first wife, Mrs. O. B. Wike Williams, in the State of Nevada, the defendant, O. B. Williams, was domiciled in the State of Nevada, then it would be your duty to return a verdict of guilty as to the defendant, O. B. Williams." (P)

Defendants except to the foregoing charge between the letters (O) and (P).

Exception No. 31.

The Court instructs you that in order for the State to make out a prima facie case as against the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, the State must satisfy you beyond a reasonable doubt, from the evidence in this case of four things, namely:

1. That the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, a woman, was lawfully married to Tom Hendrix, a man, before the times named in the bill of indictment.

2. (Q) "That after the marriage between Tom Hendrix and the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, namely, on or about the 4th day of October, 1940 the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, contracted a marriage with her co-defendant, O. B. Williams, a man, in the State of Nevada." (R)

Defendants except to the foregoing charge between the letters (Q) and (R).

Exception No. 32.

3. That at the time the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, contracted the alleged marriage [fol. 58] with her co-defendant, O. B. Williams, in the State of Nevada, Tom Hendrix, her husband by her former marriage, was still living.

4. That after the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, contracted the alleged marriage

with her co-defendant, O. B. Williams, in the State of Nevada, the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, and her co-defendant, O. B. Williams, cohabited together in the State of North Carolina.

If the State should fail to satisfy you beyond a reasonable doubt that each and everyone of those four things stated by the Court concurred as against the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, then it would be your duty to return a verdict of not guilty as to the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams.

(S) "If the State, on the contrary, however, should satisfy you beyond a reasonable doubt from the testimony that each and every one of those four things enumerated by the Court co-existed with respect to the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, then it would be your duty to return a verdict finding the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, guilty of bigamous cohabitation, unless the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, should satisfy you, not beyond a reasonable doubt nor by the greater weight of the evidence, but simply satisfy you from facts or circumstances offered in evidence either by the State or by herself or by her co-defendant, that at the time of her alleged marriage to her co-defendant, O. B. Williams, in the State of Nevada, she was lawfully divorced from the bond of her alleged first marriage to Tom Hendrix, and to do that, upon such a finding being made by you, the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, would have to satisfy you from facts or circumstances offered in evidence [fol. 59] that at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County rendered the alleged decree of divorce in a suit therein pending between Lillie Shaver Hendrix or Lillie Esther Hendrix and Thomas George Hendrix, the defendant Lillie Shaver Hendrix or Lillie Shaver Williams had her domicile in the State of Nevada." (T)

Defendants except to the charge embraced between the letters (S) and (T).

Exception No. 33.

The Court charges you that under the law which applies in this case that a State has a right to grant a divorce upon service by publication or upon substituted service in favor of any person who is at the time of the rendition of that decree of divorce domiciled in the State in which the divorce decree is rendered, notwithstanding the fact that the other party to the marriage in question may not be domiciled in that State or may be domiciled in some other State, and cannot be served personally with process in that State and does not enter a general appearance in the Court granting the divorce, and that any other State in the Union is required by the Constitution of the United States to give full faith and credit to such decree of divorce rendered in the State wherein such party is domiciled.

The Court further instructs you, however, that under the law that no State has the power or jurisdiction to grant a divorce in the case of a marriage between parties neither of whom is domiciled in such State, and that whenever the Court in a State undertakes to grant a divorce at the instance of a plaintiff who is not domiciled in such State as against a defendant who is not domiciled in such State and who is not personally served with process therein and who does not enter a general appearance in such Court, the attempted decree of divorce is void and is not entitled to full faith and credit under the Constitution of the United States in any other State.

[Vol. 60] Now, some of the law which arises in this case is the law of Nevada and some of the law which arises in this case is the law of North Carolina. The Legislature of North Carolina passed a statute in 1931, which provides that the courts of North Carolina must take judicial notice of the laws of other states in the United States, when the laws of such states come into question in the courts of North Carolina. This statute means in plain English that it is the duty of the trial Judge to instruct the jury as to what the law of the other State is when it comes into question in the courts of North Carolina.

The Court charges you as a matter of law that the law of the State of Nevada provides that any married person who has had his domicile in the State of Nevada for as lor a period of time as six weeks may bring an action in the courts of the State of Nevada against a spouse residing in some other State, and obtain a divorce from such spouse

upon substituted service, or service by publication, for wilful neglect or for extreme cruelty.

The Court further instructs you that wherever the court in a State where the plaintiff who brings an action for divorce is domiciled, grants a decree of divorce to such plaintiff, and against a non-resident spouse, on a ground recognized as good ground for divorce by the State in which the divorce is granted, but not recognized as a valid ground for divorce in the State in which the non-resident spouse has domicile, and such non-resident spouse is not served with process other than by service by publication or by substituted service, and does not enter a general appearance in the court of the State of the domicile of the plaintiff, a divorce granted by the court of the domicile of the plaintiff is nevertheless valid, and under the Federal Constitution must be recognized as valid in the State of the residence and domicile of the non-resident spouse.

[fol. 61] The Court instructs you further, however, that if a court in a suit in the State of Nevada should grant a divorce to a plaintiff who is not domiciled in Nevada, against a non-resident spouse who is not domiciled in the State of Nevada, and who is not personally served with summons in Nevada, and who does not enter a general appearance in the suit in the court in Nevada, then the divorce granted by the court in Nevada in such instance is void, and is not entitled to full faith and credit in the State in which the non-resident spouse has his or her domicile.

The Court has used the word marriage in the course of its charge. The word marriage may be used to mean either one of two things. It may be used to mean the form or ceremony by which a man and a woman may become man and wife, or it may be used to signify the relation that exists between a man and a woman who have gone through such ceremony.

Nothing else appearing, every person who undertakes to enter into a marriage is presumed to have capacity to enter a valid marriage; and

(U) "therefore the State is not required to prove beyond a reasonable doubt from the testimony that a person entering into an alleged first marriage had the capacity to contract such marriage." (V)

Defendants except to the foregoing charge between the letters (U) and (V).

Exception No. 34.

but the State does have to establish beyond a reasonable doubt from the evidence among other things, that the person who contracted such a marriage was married in accordance with the forms prescribed by law. The Court instructs you that marriage is the relation of husband and wife, and that a marriage in law is complete when parties, able and willing to contract, have actually contracted to be man and wife in the form and with the solemnities required by law.

[fol. 62] The Court further charges you that the word "marriage," when applied to a bigamous marriage, means going through the form of ceremony prescribed by law as the method for contracting marriages.

Now, the Court charges you that under the law of Nevada a minister of the Gospel duly licensed may solemnize marriages, and that no particular form of solemnization is required except that the parties must declare in the presence of the minister of the Gospel duly licensed, performing the ceremony, and two attending witnesses, that they take each other as husband and wife.

The Court instructs you that if the State should satisfy you beyond a reasonable doubt from the evidence in this case that the defendant O. B. Williams and the defendant Lillie Shaver Hendrix or Lillie Shaver Williams procured a license to marry in the State of Nevada and that pursuant to such license they appeared before a minister of the Gospel and two witnesses in Nevada and declared in the presence of such minister and witnesses that they took each other for husband and wife, then you would find that they contracted a marriage in the State of Nevada.

The Court instructs you that under the law of North Carolina that a man and a woman are married when they consent in the presence of each other and in the presence of a person authorized by the law of North Carolina to solemnize marriages that they then and there take each other as husband and wife, and when the person authorized to perform marriages in whose presence they give such consent declares them to be man and wife.

The Court further instructs you that under the law of North Carolina an ordained minister of any religious denomination, or any minister authorized by his church, or any justice of the peace, is authorized to solemnize marriage ceremonies.

[fol. 63] (W) "Now, the Court has told you that the defendants are charged with what is known in law as bigamous cohabitation and during the course of its charge the Court has used and will use the word 'cohabitation' because the statute provides that one of the essential elements of bigamous cohabitation is that the accused must cohabit in the State of North Carolina with the person with whom he is alleged to have contracted a second marriage outside of North Carolina." (X)

Defendants except to the foregoing charge between the letters (W) and (X).

Exception No. 35.

The Court instructs you that a man and a woman cohabit together within the meaning of the law if they dwell together in the same habitation and habitually engage in sexual intercourse with each other.

The Court has heretofore instructed you that the power of a Court in a State to grant divorces in cases where the defendant is a non-resident, that is to say, in cases where the defendant has his or her domicile in another State, and is not personally served with summons in the State where the court sits, and does not enter a general appearance in the divorce suit in such court, is dependent upon the question as to whether or not the State in which the plaintiff in such suit for divorce has his or her residence is the State in which the Court sits.

The Court instructs you that the domicile of a person is that place in which he has voluntarily fixed his abode or habitation, not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time.

Domiciles may be divided into domiciles of origin, domiciles of choice, and domiciles by operation of law. There is no evidence in this case tending to show that either of the [fol. 64] defendants had a domicile of origin or a domicile by operation of law in the State of Nevada, and the question of whether or not a particular defendant had his or her

domicile in the State of Nevada is dependent upon whether such defendant had a domicile of choice in Nevada.

The Court instructs you that a domicile of choice is the place which a person has elected and chosen for himself to displace his previous domicile. Domicile of choice is entirely a question of residence and intention. To constitute such a domicile, or to effect a change of domicile, there must appear both an actual residence in a particular locality and an intention to remain there or to make it one's home either permanently or for an indefinite or unlimited length of time. As soon as a point of time is reached when residence and intent concur, the domicile of choice is obtained.

The Court instructs you that if a person who has been domiciled in North Carolina leaves the State of North Carolina and actually resides in the State of Nevada and at the time of his residing in the State of Nevada intends to remain in the State of Nevada or to make it his home either permanently or for an indefinite or unlimited length of time, such person loses his domicile in North Carolina and acquires a new domicile in Nevada.

The Court further instructs you that if a person leaves his home or place of domicile, and resides elsewhere, for a mere temporary or special purpose with and intention to return to his home or domicile, there is no acquisition or change of domicile.

The rule is that a mere temporary absence, however long, from one's fixed home or domicile will not effect a change of domicile.

The Court instructs you that if a person has a domicile in North Carolina, and such person leaves North Carolina and [fol. 65] goes to the State of Nevada simply and solely for the purpose of obtaining a divorce in the State of Nevada, and with the intention of returning to the State of North Carolina when such divorce is obtained, such person never loses his domicile in North Carolina, and never acquires a new domicile in the State of Nevada.

The State relies in part in this case upon what is known in law as circumstantial evidence.

Evidence is of two kinds, direct and circumstantial. Direct evidence is evidence which if believed proves the existence of the fact in issue without any inference or presumption; while circumstantial evidence is evidence which, without going directly to prove the existence of a fact, gives rise to a logical inference that such fact does exist. While cir-

cumstantial evidence should always be closely and cautiously scanned, circumstantial evidence is not only a recognized and accepted instrumentality in the ascertainment of truth, but it is essential, and, when properly understood and applied, highly satisfactory in matters of gravest moment. The facts, their relations, connections and combinations should be natural, reasonable, clear and satisfactory. When such evidence is relied upon to convict, it should be clear, convincing, and conclusive in its connections and combinations, excluding all rational doubt as to the guilt of the accused. Circumstantial evidence may be of two kinds, consisting either of a number of consecutive links, each depending upon the other; or a number of independent circumstances all pointing in the same direction. In the former case it is said that each link must be complete in itself, and that the resulting chain cannot be stronger than its weakest link. In the latter case, the individual circumstances are compared to the strands in a rope, where no one of them may be sufficient in itself, but all together may be strong enough to prove the guilt of the accused beyond a reasonable doubt.

[fol. 66] Circumstantial evidence is not sufficient to justify conviction if the circumstances are consistent with either the hypothesis of innocence or the hypothesis of guilt. To justify inference of guilt the circumstantial evidence must exclude to a moral certainty every other reasonable hypothesis. In order to sustain a conviction on circumstantial evidence all the circumstances proved must be consistent with each other, consistent with the hypothesis that accused is guilty and at the same time inconsistent with the hypothesis that he is innocent and with every other rational hypothesis except that of guilt. In short, if all the material circumstances in evidence point to guilt and exclude any reasonable hypothesis except that of guilt—in other words, if they are inexplicable on the theory of innocence—a conviction is warranted. If all the circumstances proved, taken together, are as compatible with innocence as with guilt, there arises a reasonable doubt, requiring an acquittal. Of two reasonable hypotheses supported by the evidence in a criminal action, it is the jury's duty to adopt the hypothesis of innocence, even though that of guilt is the more probable.

The defendants did not testify in this case. Each of the defendants, however, has elicited evidence on the cross-examination of the State's witnesses tending to show that

the general reputation and character of each of the defendants is good. The Court charges you that you will consider the evidence tending to show that a particular defendant is a person of good reputation and character as substantive evidence tending to establish the innocence of such defendant upon the issue of guilt or innocence.

In deliberating upon the issues joined between the State and the defendants, it is your duty and your province to weigh all of the evidence in every way, and to assign to each portion of the testimony its proper probative force and to draw such inferences from the evidence as you find it will [fol. 67] reasonably and properly bear. You are the sole judges of the credibility of the witnesses and of the weight and value to be given to their testimony. In determining the credit you will give to a witness, and the weight and value which you will attach to a witness' testimony, you will take into consideration the conduct and demeanor of the witness upon the stand; the interest of the witness, if any, in the result of the trial; the motives of the witness, in testifying; the witness' relation to or feeling for, or against the State or the defendants; the probability or the improbability of the witness' testimony; the opportunity the witness had to know and to be informed as to matters concerning which the witness gives evidence; the capacity of the witness to observe and to recollect and to narrate the things embraced in the testimony of the witness; the inclination of the witness to speak truthfully or otherwise as to matters within the knowledge of the witness, and the character and reputation of the witness insofar as the character and reputation of the witness is disclosed by the evidence. All of these matters being taken into account, together with all other facts and circumstances in evidence, it is your duty and your province to give each witness such credit and to assign to the testimony of each witness such weight and value as you find proper.

Neither of the defendants has testified in his or her own behalf in this case. The statute provides that an accused in a criminal action has a legal right to testify or to refrain from testifying in his own behalf, as he elects, and that his or her failure to so testify shall not create any presumption against such defendant. The Court instructs you that you are not to consider a particular defendant's failure to testify to his or her prejudice at any stage of this trial.

The State has offered evidence in this case tending to show that on or about the 30th day of November, 1916, the [fol. 68] defendant, O. B. Williams, was married to Mrs. O. B. Wike Williams by a Minister of the Gospel in the County of Caldwell, North Carolina, and that the defendant O. B. Williams and Mrs. O. B. Wike Williams thereafter lived together in Caldwell County, North Carolina, between 23 and 24 years. The State has offered evidence further tending to show that during the period of time that they lived together that the defendant O. B. Williams and Mrs. O. B. Wike Williams had four children, and that the defendant O. B. Williams did not live with Mrs. O. B. Wike Williams subsequent to the 7th day of May, 1940, and that Mrs. O. B. Wike Williams died on the 24th day of June, 1943, and that Mrs. O. B. Wike Williams did not secure a divorce from the defendant, O. B. Williams.

The State has offered evidence tending to show that an officer in Caldwell County served certain papers in an alleged divorce action in the State of Nevada against Mrs. O. B. Wike Williams dated sometime in the month of July, 1940.

The State has offered evidence tending to show that the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, was married in Burke County, North Carolina, by a justice of the peace to one Tom Hendrix or Thomas George Hendrix about 22 or 23 years prior to the time of this trial, and that the defendant Lillie Shaver Hendrix or Lillie Shaver Williams lived with Tom Hendrix in Caldwell County, North Carolina, from the time of the said alleged marriage down to sometime early in the month of May, 1940, and that such defendant has not lived with Tom Hendrix or Thomas George Hendrix since that time.

The State has offered evidence tending to show that there are no living children to the alleged marriage of the witness Tom Hendrix and the feme defendant, and that sometime during the early part of May, 1940, the feme defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, and the [fol. 69] defendant, O. B. Williams were seen for the last time for a period of some months by the witness, Tom Hendrix.

The State has offered evidence tending to show and contends that you should find therefrom that the States witness Tom Hendrix, knew the defendants and that he saw them during the early part of the month of May, 1940, in

Caldwell County, North Carolina, and that he did not see them thereafter until sometime about three months later when he saw them again in North Carolina.

The State has offered in evidence an alleged certified copy of a record tending to show that it was certified by the custodian of the original of such record in the State of Nevada that the original of such record recited that C. H. Sloan, a Baptist minister in the State of Nevada, performed a marriage ceremony in the State of Nevada between the defendant, O. B. Williams, and the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, on the 4th day of October, 1940. The State has offered evidence tending to show that sometime during the fall of 1940 that the defendant, O. B. Williams, and the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, were seen together in Pineola, Avery County, North Carolina, and that from that time on for a period of approximately two and a half years subsequent thereto that the defendants were seen together at various times in Pineola, and that they both stayed in the same house there in Pineola, North Carolina, and that no person stayed in the same house except the two defendants,

(Y) "and that on one or more occasions one of the defendants stated in the presence of the other that they were married to each other, and that on one occasion the feme defendant stated that she was now Mrs. Williams."

(Z) Defendants except to foregoing portion of charge between (Y) and (Z)

Exception No. 36.

[fol. 70] The State has offered evidence tending to show and contends that you should find therefrom that the two defendants were seen subsequent to the summer of 1940 driving in an automobile together and were seen on several occasions at different times in the vicinity of Granite Falls in Caldwell County, North Carolina, and were observed together at church and in the home of a minister at Pineola, North Carolina, and in a house which they called their home, and were seen shopping in the stores together in Pineola.

The State perhaps offered other evidence in the case. It is your duty to remember all of the evidence in the case.

and to give due consideration to each and every portion of the evidence when you deliberate on your verdict.

The defendants elicited evidence on the cross-examination of some of the State's witnesses tending to show that while the defendants resided in Pineola, North Carolina, that their general reputations and characters were good.

The defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, offered in evidence a certified copy of the record of a suit between the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, as plaintiff, and Tom Hendrix or Thomas George Hendrix, as defendant; in the Eighth Judicial District Court of the State of Nevada, in and for Clark County, Nevada, showing that according to the recitation in the said record, that the plaintiff in such action, the defendant Lillie Shaver Hendrix or Lillie Shaver Williams in this action, instituted an action in Clark County, Nevada, for the avowed purpose of securing a divorce from Tom Hendrix or Thomas George Hendrix, and showing that Thomas George Hendrix was served with summons in such action by publication in a newspaper in the State of Nevada, in accordance with the provisions of the laws of the State of Nevada, and by mailing a copy of the summons and complaint to Tom Hendrix in the State of Ohio.

[fol. 71] The defendants elicited evidence on the cross-examination of one of the State's witnesses tending to show that at the time of the institution and prosecution of such alleged suit that Tom Hendrix was residing in the State of Ohio. The certified copy of the record offered in evidence by the defendant Lillie Shaver Hendrix or Lillie Shaver Williams further recites and shows that on the 4th day of October, 1940, that the Nevada Court mentioned in such record entered a decree divorcing the plaintiff, the defendant here Lillie Shaver Hendrix or Lillie Shaver Williams, from Thomas George Hendrix upon the ground of willful neglect and extreme cruelty, and reciting further that Thomas George Hendrix had been served with summons by publication in such divorce action and by substituted service by mailing to him in Ohio a copy of the summons and complaint, and reciting that Thomas George Hendrix, the defendant in such divorce suit, had not appeared for trial in such suit either in person or by attorney, and that Thomas George Hendrix, the defendant in such suit, had not been personally served with summons in such divorce action. The certified copy of the record and decree in such suit

further recites that the Nevada court found as a fact that the defendant Lillie Shaver Hendrix or Lillie Shaver Williams, the plaintiff in such suit, had been and was a bona fide resident of the State of Nevada for more than six weeks immediately preceding the bringing of such divorce suit.

The defendant, O. B. Williams, offered in evidence a certified copy of the record of a suit between such defendant, as plaintiff, and Mrs. O. B. Wike Williams, as defendant, in the Eighth Judicial District Court of the State of Nevada, and in and for Clark County, duly certified in accordance with the provisions of the Act of Congress in such cases.

The record offered in evidence by the defendant, O. B. Williams, recites that on or about the 26th day of June, [fol. 72] 1940, O. B. Williams instituted an action against Mrs. O. B. Wike Williams, designated in the record as Mrs. O. B. Williams and Carrie Ora Williams, for the purpose of securing a divorce from her, and that she was served by substituted service by a Deputy Sheriff in Caldwell County, North Carolina. Such record also recites that on the 26th day of August, 1940, the Eighth Judicial District Court in the State of Nevada in and for Clark County entered a decree of divorce in such suit and that such decree of divorce recites that the defendant, O. B. Williams, was found to have been a resident of the County of Clark in the State of Nevada for more than six weeks immediately preceding the beginning of the action, and that the defendant in such suit, Mrs. O. B. Wike Williams, had been served by substituted service in the County of Caldwell, State of North Carolina, and had not appeared in such suit either in person or by attorney. Such certified record further recites that on the 26th day of August, 1940, the Eighth Judicial District Court of Nevada in and for Clark County granted a divorce to the defendant in this action, O. B. Williams divorcing him according to such recitations from the bond of his marriage to Mrs. O. B. Wike Williams, on the ground that the defendant in such divorce action, Mrs. O. B. Wike Williams, had been guilty of willful neglect and extreme cruelty toward O. B. Williams.

The Court instructs you that the recitation in the record of the proceedings in the Nevada Court that Mrs. Lillie Shaver Hendrix or Lillie Shaver Williams had been a bona

fide resident of the State of Nevada for more than six weeks immediately preceding the bringing of her suit there constitutes prima facie evidence that she was a bona fide resident of Nevada domiciled in Nevada during the times recited. By this it is meant that such recitation standing alone is sufficient in itself to warrant you in finding that the defendant Lillie Shaver Hendrix or Lillie Shaver Williams was a bona fide resident of Nevada domiciled in Nevada as recited in such record,

[fol. 73] (AA) "but such recitation does not compel you to make such an inference, for you may find from the evidence that notwithstanding such recitation, the defendant Lillie Shaver Hendrix or Lillie Shaver Williams was not in fact or in truth domiciled in Nevada. The same rule applies to the recitations in the record of the proceedings instituted in Nevada by the defendant, O. B. Williams, and the court here charges you that the recitation in such record to the effect that the defendant, O. B. Williams, was and was found to be a bona fide resident of Nevada for more than six weeks immediately preceding the institution of his action for divorce constitutes prima facie evidence that the defendant, O. B. Williams was a bona fide resident of Nevada domiciled in Nevada at the times recited. By this it is meant that such recitation is sufficient of itself to warrant your finding that the defendant, O. B. Williams was a bona fide resident of Nevada domiciled in Nevada at the times recited in such recitation, but such recitation does not compel you to make such finding, for you may find that nowithstanding such recitation the defendant, O. B. Williams, was not in fact domiciled in the State of Nevada." (BB)

Defendants except to the foregoing charge in parentheses.

Exception No. 37.

On the evidence in this case the State and the defendants make different contentions. The State insists that you ought to find as your verdict from the evidence that both of the defendants are guilty as charged. The State contends that you ought to find from the evidence that the defendant, O. B. Williams, was married by a minister of the Gospel in Caldwell County, North Carolina, to Mrs. O. B. Wike Williams on November 30, 1916. The State

further contends that O. B. Williams and Mrs. O. B. Wike Williams lived together as man and wife in Caldwell County, North Carolina, for 22 or 23 years.

(CC) "and that Caldwell County, North Carolina, was [fol. 74] the domicile of O. B. Williams and Mrs. O. B. Wike Williams." (DD)

Defendants except to the foregoing charge between (CC) and (DD).

Exception No. 38.

The State further contends that thereafter O. B. Williams left his wife, Mrs. O. B. Wike Williams, in Caldwell County, North Carolina, some time in the early part of May, 1940 and that on that very same day his co-defendant, Mrs. Lillie Shaver Hendrix, or Lillie Shaver Williams, also left Caldwell County, North Carolina. The State says and contends that you ought to find that the two defendants appeared in the State of Nevada about the same time, and that both of them employed the same lawyer and instituted actions for divorce.

(EE) "The State contends that you ought to find that the two defendants left their fixed home in Caldwell County, North Carolina, and went to Nevada simply and solely for the purpose of securing divorces in Nevada and with the purpose at all times of returning to North Carolina as soon as they obtained such divorces." (FF)

Defendants except to the foregoing charge between the letters (EE) and (FF).

Exception No. 39.

The State says and contends that you ought to find that the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, was married some twenty-two years ago in Burke County, North Carolina, by a Justice of the Peace, to Thomas George Hendrix, and that she lived with him from that time down to sometime in May 1940, as his wife in Caldwell County, North Carolina, and at other places in North Carolina.

(GG) "but never in the State of Nevada insofar as the evidence discloses." (HH)

Defendants except to the foregoing charge between the letters (GG) and (HH).

Exception No. 40.

[fol. 75] The State further contends that Mrs. Lillie Shaver Hendrix or Lillie Shaver Williams and O. B. Williams instituted actions for divorce in the State of Nevada shortly after their arrival there, and that a decree of divorce was entered in the case brought by O. B. Williams on the 26th day of August, 1940 and that a decree of divorce was entered in the suit brought by Mrs. Lillie Shaver Hendrix or Lillie Shaver Williams on the 4th day of October, 1940 and that on the same day after the last decree of divorce was granted that the two defendants were married to each other in the State of Nevada by a minister, and that a short time thereafter they turned up together, claiming to be husband and wife, at Pineola, North Carolina, and that since they have been claiming to be husband and wife, and that they have lived together in Pineola, North Carolina, in the same house for two and a half years, and that they have been going about together, and that they have been living together as husband and wife.

The State says and contends that you ought to infer from the evidence and circumstances that these two defendants have been living together in North Carolina since they went through a marriage ceremony in Nevada and that you ought to infer from the facts and circumstances that they have been living under the same roof and that they have been claiming to be husband and wife, and that you ought to infer that they have had the opportunity to engage in sexual cohabitation with each other, and that you ought to infer from all the circumstances that they have been cohabiting together sexually over a period of many months. The State contends that the two defendants lived together in the same house and had opportunities to engage in sexual intercourse, and that you ought to find that they did engage in sexual intercourse with each other habitually.

(H) "The State contends that it has shown you as to each defendant beyond a reasonable doubt the four essential ele-[fol. 76] ments necessary to make out a prima facie case as against each of the defendants and insists that you cannot be satisfied that in the time of their marriage to each other in Nevada that the defendants or either of them had been

lawfully divorced from their respective spouses by their former marriages. The State contends that the defendants were domiciled in North Carolina, and went to Nevada merely for the purposes of securing divorces and that they intended at all times to return to North Carolina as soon as they obtained such divorces and that they did return to North Carolina pursuant to their intentions as soon as they obtained divorce decree." (JJ)

Defendants except to the foregoing charge between the letters (II) and (JJ). Exception No. 41.

The defendants, on the contrary, contend that you ought to acquit them. The defendants insist that you ought not to believe the evidence offered by the State and that you ought not to be satisfied beyond a reasonable doubt that any one of the four elements enumerated by the court as constituting a prima facie case existed as to either of the defendants, and that you ought to return a verdict of not guilty as to both of the defendants because the State has failed to carry the burden of proof imposed upon it by law. The defendants insist that the evidence shows that they are not guilty under the law in that the state has failed to establish beyond a reasonable doubt from the evidence in the case that the four essential elements constituting a prima facie case as enumerated by the court existed as to either of them, and that you ought to return a verdict finding the defendants not guilty on that ground.

The defendant, O. B. Williams, contends that it does not appear from the evidence beyond a reasonable doubt that the man that is alleged to have performed the alleged marriage ceremony between him and Mrs. O. B. Wike Williams was an ordained minister of the Gospel, or a minister of the [fol. 77] gospel licensed by his church to perform marriage ceremonies, and that you ought to acquit him upon the ground that the State has failed to show beyond a reasonable doubt that there was any valid marriage between him and his alleged first wife. The defendant, O. B. Williams, further contends that you ought not to find in this case that there is any evidence sufficient to justify you in finding beyond a reasonable doubt from the evidence that the defendant, O. B. Williams and Lillie Shaver Hendrix contracted a second marriage in the State of Nevada, or that they have lived together in the State of North Carolina subsequent to said marriage, or that they cohabited together, even if they

lived in the same habitation, so the defendant, O. B. Williams, contends that you ought not to convict him upon the ground that the State has failed to establish beyond a reasonable doubt from the testimony that the four essential elements as enumerated by the Court as constituting a prima facie case have been established and that the State has not made out a prima facie case as against such defendant.

The defendant, O. B. Williams, contends that even if you should find beyond a reasonable doubt from the evidence that the essential elements necessary to constitute a prima facie case have been established by the State that still you ought to return a verdict of not guilty because all of the facts and circumstances show that he was domiciled in the State of Nevada at the time he obtained a decree of divorce from Mrs. O. B. Wike Williams, and contends that although the evidence may have shown that he lived in Caldwell County, North Carolina, that the evidence shows that he left the State of North Carolina and went to the State of Nevada and was physically present in the State of Nevada, and that there is no evidence whatever in this case that indicates that he ever at any time had any intention of living anywhere in the world except in the State of Nevada, and that the courts in the State of Nevada found as a fact that [fol. 78] he was a resident of the State of Nevada, and that he had lived in Nevada for six weeks prior to the time he brought the suit for divorce, and that at that time he intended to remain in Nevada for an indefinite or unlimited period of time, and that he had acquired a domicile in the State of Nevada, and that the State of Nevada had the lawful right and power to dissolve his alleged marriage with his first wife, and that by virtue of his domicile in the State of Nevada, and that by virtue of his decree of divorce in the State of Nevada, he was lawfully divorced from his alleged first wife, and that you should return a verdict of not guilty upon the ground that he has established as an affirmative fact from the evidence that his alleged marriage to his alleged first wife, even if there had been such valid marriage, was not in force at the time of his alleged second marriage to his co-defendant because he had obtained a decree of divorce in the State of Nevada, in which State he was lawfully domiciled.

The defendant, O. B. Williams, contends that the only evidence in this case offered by the State in which the State seeks to show that he did not acquire a residence or domicile

in the State of Nevada is evidence that he came back to North Carolina afterwards and quitted the State of Nevada, and the defendant contends that he came to an entirely different place from any that he had ever lived in the State, and bought a home, and that he came back to North Carolina because he changed his mind after he had acquired a permanent residence or domicile in the State of Nevada, and that you ought to so find, and that you ought not to infer that he had any intention of coming back to North Carolina at the time he procured the decree of divorce in the State of Nevada, and contends that the State has not established or shown the four essential elements enumerated by the Court as constituting a prima facie case, but contends that even if the State has proven such four essential elements, that nevertheless you ought to return a verdict of not guilty, be-
[fol. 79] cause he has established to your satisfaction by facts and circumstances that he had acquired a residence in the State of Nevada at the time of obtaining his decree of divorce, and was domiciled in the State of Nevada, and that the State of Nevada had a legal right to grant a divorce in the State in which he had acquired his domicile.

The defendant, Lillie Shaver Hendrix, or Lillie Shaver Williams, contends that you ought not to find from the evidence beyond a reasonable doubt that she was ever legally married to Thomas Hendrix. She contends that Tom Hendrix testified that some man whom he did not know, was a Justice of the Peace, and that he did not know who he claimed to have been, married them, and that you ought not to believe a man is married to a certain woman if he does not know who performed the ceremony, and does not know when it was performed, at least that you ought to have a reasonable doubt as to whether or not there was any valid marriage between her and Tom Hendrix, and that you ought to acquit her on that ground if upon no other.

The defendant, Lillie Shaver Hendrix or Lillie Shaver Williams contends that even if you should find that she was married to Tom Hendrix, and if even you should find that she did not acquire any residence or domicile in the State of Nevada, and even if you should find she was married to the defendant, O. B. Williams, and returned to the State of North Carolina, that you cannot say beyond a reasonable doubt from the evidence in this case that she ever cohabited with the defendant, O. B. Williams, in North Carolina, and that the only evidence tending to show that is purely cir-

cumstantial evidence, and that the evidence is consistent with her innocence, and that you ought to give her the benefit of the doubt and say that you are not satisfied beyond a reasonable doubt or to a moral certainty that she did in fact cohabit with him, and that you ought to acquit her on that ground.

[fol. 80] The defendant, Lillie Shaver Hendrix, or Lillie Shaver Williams, contends that even if you should find beyond a reasonable doubt that all four of the elements enumerated by the Court as necessary to constitute a prima facie case have been established from the evidence, that still you ought to acquit her on the ground that she was lawfully domiciled in the State of Nevada, and that she was lawfully divorced from Tom Hendrix in the State of Nevada.

The defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, contends that after she left the State of North Carolina in May 1940, and went to the State of Nevada, that she instituted an action in the courts in the State of Nevada, and that the Court found as a fact that she was domiciled in the State of Nevada, and had a bona fide residence in the State of Nevada, for six weeks before she obtained her divorce in Nevada, and that she intended to remain in Nevada and to make her home there, for an indefinite period of time, and contends that the fact that she later returned to North Carolina was due to the fact that she changed her mind, and does not justify you in finding that she had any intention to return to North Carolina, and that you ought to find as an affirmative fact from all of the evidence in this case that when she went to Nevada and obtained a decree of divorce, that she intended to make Nevada her home, if not permanently, at least for an indefinite and unlimited length of time, and that she did not have any intention of returning to North Carolina, and she contends that upon a fair consideration of all the evidence that you ought to find that the State has failed to establish beyond a reasonable doubt that the four elements necessary to constitute a prima facie case as against her existed.

She further contends that you ought to say that you are satisfied from all the facts and circumstances in the evidence that she was lawfully divorced from her alleged first [fol. 81] husband in the State of Nevada, and that she was domiciled in the State of Nevada, and that you ought to acquit her.

It is a question of fact for you gentlemen. The Court instructs you that if the State has failed to satisfy you beyond a reasonable doubt that each and every one of the four essential elements heretofore enumerated by the Court as constituting a prima facie case with respect to the defendant, O. B. Williams, existed as to the defendant, O. B. Williams, then it would be your duty to return a verdict of not guilty as to the defendant, O. B. Williams.

(KK) "The court instructs you that if you should be satisfied from the evidence beyond a reasonable doubt that each and every one of the following four elements existed with respect to the defendant, O. B. Williams, namely:

1. That the defendant, O. B. Williams, a man, was lawfully married to Mrs. O. B. Williams, a woman, before the times named in the bill of indictment;

2. That after the marriage between the defendant, O. B. Williams, and Mrs. O. B. Wike Williams, namely on the 4th day of October 1940, the defendant, O. B. Williams, contracted a marriage with the defendant, Lillie Shaver Hendrix, a woman, in the State of Nevada.

3. That at the time the defendant, O. B. Williams, contracted the alleged marriage with Lillie Shaver Hendrix or Lillie Shaver Williams, in the State of Nevada, Mrs. O. B. Wike Williams, his wife by a former marriage, was still living;

4. That after the defendant, O. B. Williams, contracted the alleged marriage with his co-defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, in the State of Nevada, the defendant, O. B. Williams, and his co-defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, cohabited to-
[fol. 82] gether in the State of North Carolina, then you will return a verdict finding the defendant, O. B. Williams, guilty of bigamous cohabitation, as charged in the bill of indictment, unless the defendant, O. B. Williams, satisfies you from facts or circumstances offered in evidence either by the State or by himself or by his co-defendant that at the time the Eighth Judicial District Court in the State of Nevada in and for Clark County granted a decree of divorce in his suit against Mrs. O. B. Wike Williams, he was domiciled in the State of Nevada." (LL)

Defendants except to the foregoing charge between the letters (KK) and (LL).

Exception No. 42.

(MM) "If the State should satisfy you beyond a reasonable doubt from the evidence in the case that all four of the essential elements enumerated by the Court as being necessary to constitute a prima facie case as against the defendant, O. B. Williams, existed with respect to the defendant O. B. Williams, and if the defendant, O. B. Williams, should fail to satisfy you from facts or circumstances in the evidence that at the time the Eighth Judicial District Court in the State of Nevada rendered the decree of divorce in his favor in his suit against Mrs. O. B. Wike Williams, he was domiciled in the State of Nevada, then it would be your duty to return a verdict of guilty as to the defendant, O. B. Williams.

If the State should satisfy you beyond a reasonable doubt from the evidence in this case that each and every one of the four essential elements enumerated by the Court as necessary to constitute a prima facie case as against the defendant, O. B. Williams, existed with respect to the defendant, O. B. Williams, and if the defendant, O. B. Williams, has satisfied you from the facts and circumstances offered in evidence, either by the State or by himself or by his co-defendant, that at the time the Eighth Judicial District Court in the State of Nevada in and for [fol. 83] Clark County rendered a decree of divorce in his favor and against Mrs. O. B. Wike Williams he was domiciled in the State of Nevada, then you would return a verdict of not guilty as to the defendant, O. B. Williams." (NN)

Defendants except to the foregoing charge between the letters (MM) and (NN).

Exception No. 43.

The Court instructs you that you can return any one of two different verdicts as to the defendant, O. B. Williams. You can return a verdict finding the defendant, O. B. Williams, guilty, or you may find the defendant, O. B. Williams, not guilty, depending entirely upon which of the two verdicts you find to be warranted by the law and the evidence.

The Court instructs you that if the State should fail to satisfy you beyond a reasonable doubt from the evidence

that each and every one of the four essential elements enumerated by the Court as being necessary to constitute a prima facie case against the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams existed as to such defendant, then you would return a verdict finding the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, not guilty.

(OO) "The Court instructs you, however, that if the State has satisfied you from the evidence in the case beyond a reasonable doubt that these four essential elements existed as to the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, namely:

1. That the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, a woman, was lawfully married to Tom Hendrix, a man, before the times named in the bill of indictment;

2. That after the marriage between the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, and Tom Hendrix, namely on or about the 4th day of October 1940, the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, [fol. 84] contracted a marriage with her co-defendant, O. B. Williams, in the State of Nevada;

3. That at the time the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams contracted a marriage with her co-defendant, O. B. Williams in the State of Nevada, Tom Hendrix, her husband by a former marriage, was still living;

4. That after the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams contracted the alleged marriage with her co-defendant, O. B. Williams, in the State of Nevada, the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, and her co-defendant, O. B. Williams, cohabited together in the State of North Carolina—then you will return a verdict finding the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, guilty as charged in the bill of indictment, unless the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, satisfies you, not beyond a reasonable doubt nor by the greater weight of the evidence, but simply satisfies you from facts or circumstances offered in evidence, either by the State or by herself or by her co-defendant, that at the time the Eighth Judicial District

Court of the State of Nevada in and for Clark County, Nevada, rendered the decree of divorce in her favor in her suit against Tom Hendrix or Thomas George Hendrix that she was domiciled in the State of Nevada." (PP)

Defendants except to the foregoing charge between the letters (OO) and (PP).

Exception No. 44.

(QQ) "The Court instructs you that if the State has satisfied you beyond a reasonable doubt from the evidence in this case that each and every one of the four elements enumerated by the Court as being necessary to constitute a prima facie case as against the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, existed as to such defendant, and if the defendant, Lillie Shaver Hendrix or [fol. 85] Lillie Shaver Williams, has failed to satisfy you from facts or circumstances in evidence that she was domiciled in the State of Nevada at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County, Nevada, rendered a decree of divorce in her favor in her suit against Tom Hendrix or Thomas George Hendrix, then you will return a verdict finding the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, guilty as charged in the bill of indictment." (RR)

Defendants except to the foregoing charge between (QQ) and (RR).

Exception No. 45.

(SS) "If the State has satisfied you beyond a reasonable doubt from the evidence in this case that each and every one of the four elements enumerated by the Court as being necessary to constitute a prima facie case as against the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, and if the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, has satisfied you from facts or circumstances in evidence that she was domiciled in the State of Nevada at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County, Nevada, rendered a decree of divorce in her favor in her suit against Tom Hendrix or Thomas George Hendrix, then you will return a verdict finding the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, not guilty." (TT)

Defendants except to the foregoing charge between (SS) and (TT).

Exception No. 46.

You may now retire and deliberate upon your verdict.

The foregoing is respectfully submitted as the case on appeal in that certain action entitled State v. O. B. Williams and Lillie Shaver Hendrix.

This 22nd day of January, 1944.

W. H. Strickland, Attorney for Defendants.

[fol. 86] Service of the foregoing case on appeal is hereby accepted and receipt of a copy thereof duly acknowledged.

This 22nd day of January, 1944.

L. S. Spurling, Solicitor for the 16th Judicial District.

In Superior Court of Caldwell County

Assignments of Error

Assignment of Error No. 1:

The defendants, and each of them, assign as error the ruling of the Court in overruling their special appearance and motion to dismiss as follows:

[Title omitted]

Special Appearance and Motion to Dismiss

Now come the defendants, through their counsel, W. H. Strickland, and enter this their special appearance and motion to dismiss and would respectfully show unto the court the following:

1

A. That the defendants, and each of them, have heretofore been placed in jeopardy of their liberty and that the identical cause of action has been prosecuted through the Supreme Court of the United States wherein an opinion was rendered as reported in Vol. 87, Lawyers' Edition, at page 189, wherein the judgment of the Supreme Court of North Carolina was reversed and the defendants set at liberty, said Supreme Court of the United States, specifically overruling Haddock v. Haddock, 201 U. S. 562, the

former decision of said Court upon which the North Carolina Supreme Court affirmed a conviction of said defendants.

[fol. 87] 2

B. That the action of the Supreme Court of North Carolina remanding said cause to the Superior Court of Caldwell County for a new trial is not consistent with the opinion of the Supreme Court of the United States above referred to for the reason that the majority opinion closed as follows: "Haddock v. Haddock is overruled. The judgment is reversed and the cause is remanded to the Supreme Court of North Carolina for proceedings not inconsistent with this opinion.

It is so ordered."

3

C. That the Supreme Court of North Carolina failed and refused to reverse its judgment as directed by the Supreme Court of the United States but on the contrary 'vacated' its judgment, it being the contention of the defendants that the Supreme Court of North Carolina having 'vacated' its judgment that it was without authority thereafter to direct a new trial.

4

D. That the Supreme Court of North Carolina ordered a new trial of the defendants without assigning any errors committed by the Superior Court of Caldwell County, and that, therefore, the opinion of the United States Supreme Court hereinbefore referred to constitutes the law of the case and is binding upon the State of North Carolina as well as the defendants.

Wherefore, the defendants through their counsel pray the Court on this their special appearance that said cause of action be dismissed on the grounds of former jeopardy and the other grounds herein specifically set out. (R. p. 3).

Assignment of Error No. 2: (R. p. 4):

The defendants, and each of them, assign as error the overruling of their motion to set aside the verdict of the [fol. 88] jury for the reasons stated in their motion.

Assignment of Error No. 3 (R. p. 5):

The defendants and each of them, assign as error the refusal of the Court to allow their motion in arrest of judgment for the reason that the statute, to-wit: Section 4342 of the North Carolina Code, under which said defendants were tried and convicted, is unconstitutional by virtue of the 14th Amendment to the United States Constitution.

Assignment of Error No. 4 (R. p. 5):

The defendants and each of them, assign as error the judgment rendered against them imposing prison sentences for the reason that said judgment is contrary to the former decision of the United States Supreme Court in this identical case.

Assignment of Error No. 5 (R. p. 11):

The defendants, and each of them, assign as error the following question and answer:

Q. What was the conversation with them?
A. It was in Newland where we first saw him. Mr. Teague spoke to them.

Assignments of Error Nos. 6 and 7 (R. p. 11):

The defendants, and each of them, assign as error the following question and answer:

Q. Tell what was said?
A. Charlie Teague was the one that done the talking to them.

Assignment of Error No. 8 (R. p. 11):

The defendants, and each of them, assign as error the following question and answer:

Q. Was he an officer?
A. Yes, and he and I were together and he spoke to Mrs. Williams and she said her name was Mrs. Williams now.

Assignment of Error No. 8A: The defendants, and each of them assign as error the following question and answer:

Q. Was the defendant, O. B. Williams, present and close [fol. 89] enough to hear her at that time?
A. Yes. (R. p. 12).

Assignment of Error No. 9 (R. p. 12):

The defendants, and each of them, assign as error the admission over their objections the following evidence:

"We left Newland, Mr. and Mrs. Williams and Charlie Teague and I went in an automobile to Pineola."

Assignment of Error No. 10 (R. p. 12):

The defendants, and each of them, assign as error the following question and answer:

Q. Tell what all happened when you got to Pineola?'
A. When we got to Pineola we stopped there where they said they lived.

Assignment of Error No. 11 (R. p. 12):

The defendants, and each of them, assign as error the following question and answer:

Q. Who said that?
A. Mr. and Mrs. Williams. We were all together.

Assignment of Error No. 12 (R. p. 12):

The defendants, and each of them, assign as error the following question and answer:

Q. What did Mr. O. B. Williams say to you there?
A. Mrs. Williams got out of the car and went down to the house where she and Mr. Williams lived to get some things, and she was gone a right long while, and Mr. Williams and myself stayed in the car and she said she went to get ——.

Assignment of Error Nos. 13 and 14 (R. p. 12):

The defendants, and each of them, assign as error the following question and answer:

Q. Did either of the defendants, in the presence of the other, make any statement as to where they were living at that time?
A. Yes.

Assignment of Error No. 15 (R. p. 13):

The defendants, and each of them, assign as error the fol- [fol. 90] lowing question and answer:

Q. What did either of them say in the presence of the other?

A. They said they were living there in that house right below where we stopped at Pineola.

Assignment of Error No. 16 (R. p. 13):

The defendants, and each of them, assign as error the refusal of the Court to allow their motion to strike from the record the answer quoted immediately above.

Assignment of Error No. 17 (R. p. 13):

The defendants, and each of them, assign as error the following question and answer:

Q. Did either one of the defendants make any statement in the presence of the other as to how long they had been living in Pineola, Avery County?

A. I don't remember that they made any statement as to how long they had been living there.

Assignments of Error Nos. 18 & 19 (R. p. 13):

The defendants, and each of them assign as error the following question and answer:

Q. Was any other statement made by either of them in the presence of each other?

A. They said that that was their home and that they were living right there below where we stopped about 200 yards from the highway.

Assignment of Error No. 20 (R. p. 13):

The defendants, and each of them, assign as error the following question and answer:

Q. Did you see any dwelling house there?

A. Yes, I saw her going down there and going into the house.

Assignment of Error No. 20A (R. p. 13):

The defendants, and each of them, assign as error the following question and answer:

Q. You may state whether Mrs. Williams made a statement as to whether she and Mr. Williams lived there?

A. Yes.

Assignment of Error No. 20B (R. p. 14):

[fol. 91] The defendants, and each of them, assign as error the following question and answer propounded by the Court:

Q. Were all of those statements made in the presence of the other?

A. Yes.

Assignment of Error No. 21 (R. p. 15):

The defendants, and each of them, assign as error the following question and answer:

Q. Did you ever talk to either one of them in the presence of the other when they would refer to themselves as being married?

A. Yes. These defendants had been living together there for the last month or six weeks in the same house they were living in in the Fall of 1940.

Assignment of Error No. 22 (R. p. 17):

The defendants, and each of them, assign as error the ruling of the court in overruling their motion for judgment as of nonsuit at the close of the State's evidence.

Assignment of Error No. 23 (R. p. 50):

The defendants, and each of them, assign as error the refusal of the Court to allow their written motion for judgment as of nonsuit at the close of all the evidence in the following manner:

Motion for Judgment as of Nonsuit:

The defendants, and each of them, at the close of the evidence for the State move the Court that a judgment as of nonsuit be entered in the above entitled matter, and would respectfully show the following:

1. That the State has offered no competent evidence establishing fraud in the establishment of their respective residences in the State of Nevada so as to deprive the Ne-

vada courts of jurisdiction of the divorce action instituted in said courts by the defendants herein, the plaintiffs in the Nevada actions; that if such evidence has been adduced it is incompetent in this cause of action for the reason that the [fol. 92] judgments of the Nevada courts cannot be collaterally attacked; that the only remedy would be by motion in the cause in the courts of Nevada where said judgments were rendered.

2. That the portion of Section 4342 of the North Carolina Code 1939, applicable to the offense with which the defendants stand charged is unconstitutional and in violation of Amendment XIV to the Constitution of the United States in that the North Carolina Legislature attempts under and by virtue of the provisions of said statute to extend the legislative powers of the State of North Carolina beyond the borders of said State and within the political and judicial domain of every other State and decree what shall be lawful divorce decrees and marriages within those States; that the effect of said statute if declared to be constitutional and enforceable will tend to freeze the citizenship of the various States within their respective borders and prevent the free and untrammeled passing and repassing of the citizens of the United States into and from the various States of the Union, all of which is in violation of Amendment XIV of the United States Constitution.

3. That the Supreme Court of North Carolina, having assigned no errors in ordering a new trial in the Superior Court of Caldwell County, there is nothing for the court to try; that all matters and things have been heretofore adjudicated in the former trial and that such matters and things having been adjudicated and the judgment of the Supreme Court of North Carolina, having been reversed by the Supreme Court of the United States, the opinion of the Supreme Court of the United States is now the law of the case; and Haddock v. Haddock having been specifically overruled, there is no law upon which to base either a new trial or a conviction of these defendants.

4. That North Carolina is obliged to give full faith and [fol. 93] credit to divorce decrees regular on their face and obtained in accordance with the laws of Nevada under the full faith and credit clause of the United States Constitution, Article IV, Section I.

Wherefore, the defendants, through their counsel, pray the court that a judgment as of nonsuit be entered and that they go hence without day.'

W. H. Strickland, Attorney for Defendants.

Assignment of Error No. 24 (R. p. 53):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters A to B, which is as follows:

"The crime of bigamous cohabitation was created by a statute enacted by the General Assembly of this State in 1913. This statute is now embodied in Section 4342 of the Consolidated Statutes of North Carolina. Insofar as the same is germane to this case, Section 4342 of the Consolidated Statutes reads as follows: 'If any person, being married, shall contract a marriage with any other person outside of this State, which marriage would be punishable as bigamous if contracted within this State, and shall thereafter cohabit with such person in this State, he shall be guilty of a felony and shall be punished as in cases in bigamy. Nothing contained in this section shall extend to any person marrying a second time who at the time of such second marriage shall have been lawfully divorced from the bond of the first marriage.'"

Assignment of Error No. 25 (R. p. 53):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters C to D, as follows:

"A person commits the crime of bigamous cohabitation under this statute if he does both of the following acts under the following circumstances: First, if he marries a [fol. 94] second time outside of the State of North Carolina while his spouse by a former marriage is still alive and the former marriage is still in force; and, Second, if he thereafter cohabits with the spouse by the alleged second marriage in the State of North Carolina."

Assignment of Error No. 26 (R. p. 54):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters E to F, which is as follows:

"Where the State seeks the conviction of an accused upon a charge of bigamous cohabitation, the State has the burden of proving beyond a reasonable doubt from the evidence four facts, namely: (1) That the accused was lawfully married to one person; (2) That thereafter the accused contracted a second marriage with another person outside of North Carolina; (3) That the spouse of the accused by the former marriage was living at the time the second marriage was contracted by the accused outside of North Carolina; (4) That after contracting the second marriage outside of North Carolina, the accused cohabited in North Carolina with the person with whom he had contracted such second marriage.

"Where these four facts are shown by the State beyond a reasonable doubt from the testimony in a prosecution for bigamous cohabitation, the State has made out what the law calls a prima facie case, and is not bound to go further and prove that the former marriage has not been dissolved by divorce, knowledge as to such dissolution being peculiarly within the cognizance of the accused."

Assignment of Error No. 27 (R. p. 54):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters G to H, which is as follows:

"When the State proves the four facts enumerated by the Court as constituting a prima facie case beyond a rea- [fol. 95] sonable doubt from the testimony, the burden then devolves upon the accused to satisfy the trial jury, not beyond a reasonable doubt nor by the greater weight of the evidence, but simply to satisfy the trial jury from facts or circumstances offered in evidence either by the State or by the accused or by a co-defendant, that the accused was lawfully divorced from his first spouse at the time of his second marriage, if the accused in the prosecution for bigamous cohabitation relies upon the dissolution of his first marriage by divorce as a defense."

Assignment of Error No. 28 (R. p. 55):

The defendants, and each of them, assign as error that portion of the Court's charge embraced within the letters I to J, which is as follows:

"The Court instructs you that in the prosecution of the defendant, O. B. Williams, upon the charge of bigamous cohabitation, the law casts upon the State the burden of showing four things beyond a reasonable doubt from the evidence, in order to constitute a prima facie case as against the defendant, O. B. Williams. These four things are as follows: (1) That the defendant, O. B. Williams, a man, was lawfully married to Mrs. O. B. Wike Williams, a woman, before the times named in the bill of indictment; (2) That after his marriage to Mrs. O. B. Wike Williams, namely, on or about the 4th day of October, 1940 the defendant, O. B. Williams, contracted a marriage with the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, a woman, in the State of Nevada; (3) That at the time the defendant, O. B. Williams, contracted the alleged marriage with Lillie Shaver Hendrix or Lillie Shaver Williams, in the State of Nevada, Mrs. O. B. Wike Williams, his wife by his former marriage, was still living; and (4) That after the defendant, O. B. Williams, contracted the alleged marriage with his co-defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, in the State of Nevada, the defendant, O. B. Williams, and his co-defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, cohabited together in the State of North Carolina."

[fol. 96] Assignment of Error No. 29 (R. p. 56):

The defendants, and each of them assign as error that portion of the Court's charge embraced within the letters K to L, which is as follows:

"If the State, however, should satisfy you beyond a reasonable doubt from the evidence in this case that each and every one of these four things existed in the case of O. B. Williams, then it would be your duty to return a verdict finding the defendant, O. B. Williams, guilty of bigamous cohabitation, as charged in the bill of indictment, unless the defendant, O. B. Williams, should satisfy you from facts or circumstances offered in evidence either by the State or by himself or by his co-defendant, that at the time of his alleged marriage to his co-defendant in the State of Nevada, he was lawfully divorced from the bond of his former marriage to Mrs. O. B. Wike Williams, and to do that, upon such finding being made by you, the defendant,

O. B. Williams, would have to satisfy you from facts or circumstances offered in evidence, either by the State or by himself or by his co-defendant, that at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County entered the decree of divorce in the suit therein instituted between Otis B. Williams and his alleged first wife, Mrs. O. B. Wike Williams, the defendant, O. B. Williams, had his domicile in the State of Nevada."

Assignment of Error No. 30 (R. p. 56):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters M to N, which is as follows:

"and if the defendant, O. B. Williams, should satisfy you from facts or circumstances in evidence that at the time the Court in Nevada rendered the alleged decree of divorce set forth in the certified copy of the record from the State of Nevada that he, O. B. Williams, had his domicile in the [fol. 97] State of Nevada, then it would be your duty to return a verdict of not guilty as to the defendant, O. B. Williams."

Assignment of Error No. 31 (R. p. 57):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters O to P, which is as follows:

"and the defendant, O. B. Williams, should fail to satisfy you from facts or circumstances in evidence that at the time of the rendition of the alleged decree of divorce in the suit between O. B. Williams and his alleged first wife, Mrs. O. B. Wike Williams, in the State of Nevada, the defendant, O. B. Williams, was domiciled in the State of Nevada, then it would be your duty to return a verdict of guilty as to the defendant, O. B. Williams."

Assignment of Error No. 32 (R. p. 57):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters Q to R, which is as follows:

"That after the marriage between Tom Hendrix and the defendant, Lillie Shaver Hendrix or Lillie Shaver Wil-

liams, namely, on or about the 4th day of October, 1940 the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams contracted a marriage with her co-defendant, O. B. Williams, a man, in the State of Nevada."

Assignment of Error No. 33 (R. p. 59):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters S to T, which is as follows:

"If the State, on the contrary, however, should satisfy you beyond a reasonable doubt from the testimony that each and every one of those four things enumerated by the court co-existed with respect to the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, then it would be your [fol. 98] duty to return a verdict finding the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, guilty of bigamous cohabitation, unless the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, should satisfy you, not beyond a reasonable doubt nor by the greater weight of the evidence, but simply satisfy you from facts or circumstances offered in evidence either by the State or by herself or by her co-defendant, that at the time of her alleged marriage to her co-defendant, O. B. Williams, in the State of Nevada, she was lawfully divorced from the bond of her alleged first marriage to Tom Hendrix, and do that, upon such a finding being made by you, the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, would have to satisfy you from facts or circumstances offered in evidence that at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County rendered the alleged decree of divorce in a suit therein pending between Lillie Shaver Hendrix or Lillie Esther Hendrix and Thomas George Hendrix, the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams had her domicile in the State of Nevada."

Assignment of Error No. 34 (R. p. 60):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters U to V, which is as follows:

"therefore, the State is not required to prove beyond a reasonable doubt from the testimony that a person enter-

ing into an alleged first marriage had the capacity to contract such marriage."

Assignment of Error No. 35 (R. p. 63):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters W to X, which is as follows:

"Now, the Court has told you that the defendants are charged with what is known in law as bigamous cohabitation, and during the course of its charge, the court has used [fol. 99] and will use the word cohabitation because the status provides that one of the essential elements of bigamous cohabitation is that the accused must cohabit in the State of North Carolina with the person with whom he is alleged to have contracted a second marriage outside of North Carolina."

Assignment of Error No. 36 (R. p. 69):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters Y to Z, which is as follows:

"and that on one or more occasions one of the defendants stated in the presence of the other that they were married to each other, and that on one occasion the feme defendant stated that she was now Mrs. Williams."

Assignment of Error No. 37, (R. p. 73):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters AA to BB, which is as follows:

"but such recitation does not compel you to make such an inference, for you may find from the evidence that notwithstanding such recitation, the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, was not in fact or in truth domiciled in Nevada. The same rule applies to the recitations in the record of the proceedings instituted in Nevada by the defendant, O. B. Williams, and the court here charges you that the recitation in such record to the effect that the defendant, O. B. Williams was and was found to be a bona fide resident of Nevada for more than six weeks immediately preceding the institution of his ac-

tion for divorce constitutes prima facie evidence that the defendant, O. B. Williams, was a bona fide resident of Nevada domiciled in Nevada at the times recited. By this it is meant that such recitation is sufficient of itself to warrant your finding that the defendant, O. B. Williams, was a bona fide resident of Nevada domiciled in Nevada at the times recited in such recitation, but such recitation does not compel you to make such finding, for you may find that [fol. 100] notwithstanding such recitation the defendant, O. B. Williams, was not in fact domiciled in the State of Nevada."

Assignment of Error No. 38 (R. p. 74):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters CC to DD, which is as follows:"

"and that Caldwell County, North Carolina, was the domicile of O. B. Williams and Mrs. O. B. Wike Williams."

Assignment of Error No. 39 (R. p. 74):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters EE to FF, which is as follows:

"The State contends that you ought to find that the two defendants left their fixed homes in Caldwell County, North Carolina, and went to Nevada simply and solely for the purpose of securing divorces in Nevada and with the purpose at all times of returning to North Carolina as soon as they obtained such divorces."

Assignment of Error No. 40 (R. p. 74):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters GG and HH, which is as follows:

"but never in the State of Nevada insofar as the evidence discloses."

Assignment of Error No. 41 (R. p. 76):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters II to JJ (R. p. 76), which is as follows:

"The State contends that it has shown you as to each defendant beyond a reasonable doubt the four essential elements necessary to make out a prima facie case as against each of the defendants and insists that you cannot be satisfied that at the time of their marriage to each other in Nevada that the defendants or either of them had been lawfully divorced from their respective spouses by their [fol. 101] former marriages. The State contends that the defendants were domiciled in North Carolina and went to Nevada merely for the purposes of securing divorces and that they intended at all times to return to North Carolina as soon as they obtained such divorces and that they did return to North Carolina pursuant to their intentions as soon as they obtained divorce decrees."

Assignment of Error No. 42 (R. p. 82):

The defendants and each of them, assign as error that portion of the court's charge embraced within the letters KK to LL, which is as follows:

"The Court instructs you that if you should be satisfied from the evidence beyond a reasonable doubt that each and every one of the following four elements existed with respect to the defendant, O. B. Williams, namely:

1. That the defendant, O. B. Williams, a man, was lawfully married to Mrs. O. B. Williams, a woman, before the times named in the bill of indictment;

2. That after the marriage between the defendant, O. B. Williams and Mrs. O. B. Wike Williams, namely on the 4th day of October, 1940 the defendant, O. B. Williams, contracted a marriage with the defendant, Lillie Shaver Hendrix, a woman, in the State of Nevada;

3. That at the time the defendant, O. B. Williams, contracted the alleged marriage with Lillie Shaver Hendrix or Lillie Shaver Williams, in the State of Nevada, Mrs. O. B. Wike Williams, his wife by a former marriage, was still living;

4. That after the defendant, O. B. Williams, contracted the alleged marriage with his co-defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, in the State of Nevada, the defendant, O. B. Williams, and his co-defendant, Lillie

Shaver Hendrix or Lillie Shaver Williams, cohabited to-
[fol. 102] gether in the State of North Carolina, then you will return a verdict finding the defendant, O. B. Williams, guilty of bigamous cohabitation, as charged in the bill of indictment, unless the defendant, O. B. Williams, satisfies you from facts or circumstances offered in evidence either by the State or by himself or by his co-defendant that at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County granted a decree of divorce in his suit against Mrs. O. B. Wike Williams, he was domiciled in the State of Nevada."

Assignment of Error No. 43 (R. p. 83).

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters MM to NN, which is as follows:

"If the State should satisfy you beyond a reasonable doubt from the evidence in the case that all four of the essential elements enumerated by the Court as being necessary to constitute a prima facie case as against the defendant, O. B. Williams, existed with respect to the defendant, O. B. Williams, and if the defendant, O. B. Williams, should fail to satisfy you from facts or circumstances in the evidence that at the time the Eighth Judicial District Court in the State of Nevada rendered the decree of divorce in his favor in his suit against Mrs. O. B. Wike Williams, he was domiciled in the State of Nevada, then it would be your duty to return a verdict of guilty as to the defendant, O. B. Williams.

If the State should satisfy you beyond a reasonable doubt from the evidence in this case that each and every one of the four essential elements enumerated by the Court as necessary to constitute a prima facie case as against the defendant, O. B. Williams, existed with respect to the defendant, O. B. Williams, and if the defendant, O. B. Williams, has satisfied you from the facts and circumstances offered in evidence, either by the State or by himself or by his co-
[fol. 103] defendant, that at the time the Eighth Judicial District Court in the State of Nevada in and for Clark County rendered a decree of divorce in his favor and against Mrs. O. B. Wike Williams, he was domiciled in the State of Nevada, then you would return a verdict of not guilty as to the defendant, O. B. Williams."

Assignment of Error No. 44 (R. p. 84):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters OO to PP, which is as follows:

"The Court instructs you, however, that if the State has satisfied you from the evidence in the case beyond a reasonable doubt that these four essential elements existed as to the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, namely:

1. That the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, a woman, was lawfully married to Tom Hendrix, a man, before the times named in the bill of indictment;

2. That after the marriage between the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, and Tom Hendrix, namely on or about the 4th day of October 1940, the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, contracted a marriage with her co-defendant, O. B. Williams, in the State of Nevada;

3. That at the time the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, contracted a marriage with her co-defendant, O. B. Williams, in the State of Nevada, Tom Hendrix, her husband by a former marriage, was still living;

4. That after the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams contracted the alleged marriage with her co-defendant, O. B. Williams, in the State of Nevada, the defendant, Lillie Shaver Hendrix or Lillie [fol. 104] Shaver Williams, and her co-defendant, O. B. Williams, cohabited together in the State of North Carolina,

—then you will return a verdict finding the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, guilty as charged in the bill of indictment, unless the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams satisfies you, not beyond a reasonable doubt nor by the greater weight of the evidence, but simply satisfies you from facts or circumstances offered in evidence, either by the State or by herself or by her co-defendant, that at the time the Eighth Judicial District Court of the State of Nevada, in and for Clark County, Nevada, rendered the decree of divorce in

her favor in her suit against Tom Hendrix or Thomas George Hendrix, that she was domiciled in the State of Nevada."

Assignment of Error No. 45 (R. p. 85):

The defendants, and each of them, assign as error that portion of the court's charge embraced within the letters QQ and RR, which is as follows:

"The Court instructs you that if the State has satisfied you beyond a reasonable doubt from the evidence in this case that each and every one of the four elements enumerated by the Court as being necessary to constitute a prima facie case as against the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, existed as to such defendant, and if the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, has failed to satisfy you from facts or circumstances in evidence that she was domiciled in the State of Nevada at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County, Nevada, rendered a decree of divorce in her favor in her suit against Tom Hendrix or Thomas George Hendrix, then you will return a verdict finding the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, guilty as charged in the bill of indictment."

Assignment of Error No. 46 (R. p. 85):

The defendants, and each of them, assign as error that [fol. 105] portion of the court's charge embraced within the letters SS to TT, which is as follows:

"If the State has satisfied you beyond a reasonable doubt from the evidence in this case that each and every one of the four elements enumerated by the Court as being necessary to constitute a prima facie case as against the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, and if the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, has satisfied you from facts or circumstances in evidence that she was domiciled in the State of Nevada at the time the Eighth Judicial District Court of the State of Nevada in and for Clark County, Nevada, rendered a decree of divorce in her favor in her suit against Tom Hendrix or Thomas George Hendrix, then you will return a verdict find-

ing the defendant, Lillie Shaver Hendrix or Lillie Shaver Williams, not guilty."

AGREEMENT OF COUNSEL

It is hereby stipulated and agreed that the foregoing and annexed pages constitute the case on appeal to the Supreme Court of North Carolina in that certain action entitled State v. O. B. Williams and Lillie Shaver Hendrix.

This 9th day of February, 1944.

W. H. Strickland, Attorney for Defendants. L. S. Spurling, Solicitor 16th Judicial District.

(Appeal Bond in the sum of $150.00 filed.)

(Transcript Certified by Clerk Superior Court.)

[fol. 106] SUPREME COURT OF NORTH CAROLINA—SPRING TERM, 1944

No. 291

STATE

v.

O. B. WILLIAMS and LILLIE SHAVER HENDRIX

Appeal by defendants from Ervin, Special Judge, November Term, 1943, of Caldwell.

Criminal prosecution tried upon indictment charging the defendants with bigamous cohabitation in violation of G. S. 14-183 (C. S. 4342).

The controlling facts as disclosed by the record are:

1. That the male defendant was married to Carrie Ora Wyke in 1916; that they lived together in Caldwell County, this State, as husband and wife for more than 23 years and reared a family of four children; that they have not lived together since the male defendant deserted his home on 7 May, 1940; that Carrie Ora Wyke Williams had brought no divorce proceedings against her husband at the time of the first trial of this cause in the Spring of 1941, at which time she testified in the case, and that she is now dead.

2. That the *feme* defendant was married to Tom Hendrix in 1920; that they lived together in this State as husband and wife for more than 19 years; that no children were born of this marriage; that they have not lived together since the *feme* defendant deserted her home on 7 May, 1940; that Tom Hendrix had brought no divorce proceeding against the *feme* defendant prior to the first trial of this cause, at which time he testified in the case, but that he has since and remarried.

3. That Tom Hendrix was working in the store of the male defendant at the time the defendants herein left the State; that the first knowledge he had of his wife's departure was "when he went home at night she was gone".

4. That both of the defendants appeared at the Alamo Court, Las Vegas, Nevada, on 15 May, 1940.

5. That the male defendant instituted action for divorce in Clark County, Nevada, on 26 June, 1940, charging his wife with "extreme cruelty towards this plaintiff". Service of summons was obtained by publication, and no appearance was made by the defendant, Carrie Ora Williams, albeit notice was served on her by the sheriff of Caldwell County, North Carolina. A decree of absolute divorce was granted by the Nevada Court on 26 August, 1940, for cause set out in the complaint. I. S. Thompson appeared as counsel for plaintiff in the action.

[fol. 107]. 6. That the *feme* defendant instituted action for divorce in Clark County, Nevada, on 26 June, 1940, alleging failure to support and "extreme mental cruelty" on the part of her husband. Service of summons was obtained by publication, and no appearance was made by the defendant, Tom Hendrix, though he sent plaintiff's counsel a post card saying that upon receipt of original appearance he would sign it. This he never did. O. B. Williams testified for the plaintiff in the case. He said the plaintiff had been living at the Alamo Court, Las Vegas, since 15 May, 1940, and that he had seen her every day while there. The plaintiff testified that she arrived in Clark County, Nevada, on 15 May, 1940, with intention of establishing an indefinite permanent residence. A decree of absolute divorce was granted by the Nevada Court on 4 October, 1940, for causes set out in the complaint. I. S. Thompson appeared as counsel for plaintiff in the action.

7. That the defendants were married in the State of Nevada on 4 October, 1940, and shortly thereafter in the fall of 1940, returned to North Carolina and are now living together at Pineola, Avery County, N. C. A true bill was returned against them at the February Term, 1941, Caldwell Superior Court.

8. The case was tried at the February-March Term, 1941, Caldwell Superior Court, which resulted in verdict and judgments against the defendants, and these were upheld on appeal. 220 N. C. 445, 17 S. E. (2d) 769. The judgment of affirmance was reversed on *certiorari* to the Supreme Court of the United States, and the cause remanded for proceedings not inconsistent with the opinion filed therein. 317 U. S. 287, 87 L. ed. 279. The case was thereupon remanded for a new trial in accordance with the opinion of

the Supreme Court of the United States, 222 N. C. 609, 24 S. E. (2d) 256.

When the matter was again called for trial at the November Term, 1943, Caldwell Superior Court, the defendants entered a plea of former jeopardy, and moved to dismiss on the ground that the judgment of affirmance had been "reversed" by the Supreme Court of the United States, and, therefore, the defendants were entitled to be discharged. Overruled; exception.

Verdict: Guilty as charged in the bill of indictment.

Judgments: Imprisonment in the State's Prison as to male defendant for not less than one nor more than three [fol. 108] years, as to *feme* defendant for not less than 8 nor more than 24 months.

The defendants appeal, assigning errors.

Attorney-General McMullan and Assistant Attorneys-General Patton and Rhodes for the State.

W. H. Strickland for defendant.

Stacy, C. J. This is the same case that was before us at the Fall Term, 1941, reported in 220 N. C. 445, 17 S. E. (2d) 769, with ample reference to pertinent statutes and full statement of the facts, to which reference may be had to avoid repetition.

The short and simple facts upon which the case was made to turn in the court below are these: For many years the defendants lived with their respective spouses in the village of Granite Falls, Caldwell County, this State. The *feme* defendant's husband worked in the store of the male defendant. The defendants disappeared from their respective homes on 7 May, 1940. Eight days thereafter they both appeared at the Alamo Court, Las Vegas, Nevada. Exactly six weeks later each filed suit for divorce in Clark County, Nevada, on grounds recognized in that State, but not in this State. No appearance was made by the nonresident defendant spouse in either case. Service was by publication. Both defendants employed the same attorney. The uncontested divorces were granted on 26 August and 4 October, 1940, respectively. On the day of the last divorce, the defendants were married in the State of Nevada, and almost immediately thereafter they returned to North Carolina and have since lived together in this State. In all, they were out of

the State about six months. The defendants were convicted of bigamous cohabitation at the February-March Term, 1941, Caldwell Superior Court, and judgments pronounced. The judgments were affirmed on appeal, and later reversed by the Supreme Court of the United States and the cause remanded for proceedings not inconsistent therewith.

Our former decision was predicated primarily upon the ground that the Nevada divorce decrees, here in question, were not entitled to full faith and credit in this jurisdiction, because they were obtained on constructive service and no appearance had been made in the divorce proceedings by the non-resident defendants named therein. For this position we relied upon the celebrated case of Haddock v. Haddock, 201 U. S. 562, and a number of our own decisions accordant [fol. 109] therewith. Tyson v. Tyson, 219 N. C. 617, 14 S. E. (2d) 673; Pridgen v. Pridgen, 203 N. C. 533, 166 S. E. 591; S. v. Herron, 175 N. C. 754, 94 S. E. 698. Aside from this, however, but secondarily, it was suggested that the evidence tended to show the defendants were not *bona fide* residents of the State of Nevada, and that they had fraudulently obtained their divorces in that State.

When the matter reached the Supreme Court of the United States on *certiorari* the Haddock case was overruled. This removed the principal ground upon which our decision had been made to rest. The logical result, therefore, was a reversal of the judgment of affirmance. Williams and Hendrix v. North Carolina, 317 U. S. 287, 87 L. ed. 279, 143 L. R. A. 1273. Not finding it appropriate to do so, the court of last resort did not pass upon the further challenge to the divorce decrees, towit, that the plaintiff in each case had acquired no actual, *bona fide* domicil in Nevada, and the proceeding was a sham and a fraud.

The contention is advanced that as the Supreme Court of the United States ground its decison on the assumption the defendants had acquired *bona fide* domicils in the State of Nevada (the only occasion for overruling Haddock v. Haddock) based in part at least on concession of evidence to support such a finding, the assumption must continue throughout all subsequent proceedings, and that so far as the present prosecution is concerned, no further inquiry into the matter is permissible. The argument is that originally the prosecution assumed it might assail the Nevada divorce decrees on one or two grounds; first, want of domicil in the divorce forum, Bell v. Bell, 181 U. S. 175, 45 L. ed.

804; and, secondly, want of effective service of process if domicil were established, Haddock v. Haddock, *supra*. Either showing, it was thought, would suffice to defeat the jurisdiction of the Nevada court. So, without contesting the question of domicil, the prosecution elected to stake its case in the Supreme Court on the second view, and lost. Consequently, it ought not to be permitted to go back now and challenge the defense on the first ground alone. Potts v. Ins. Co., 206 N. C. 257, 174 S. E. 123. This would be taking "two bites at the cherry". Dependents of Thompson v. Funeral Home, 205 N. C. 801, 172 S. E. 500. In short, the contention is that the assumption of domicil being necessary to reach the second view—the chosen battle-ground of the State—the fact of domicil is *res judicata*, and binding on the prosecution.

[fol. 110] The conclusion is a *non sequitur*. Even if the jury had found the defendants were domiciled in Nevada, still under the doctrine of Haddock, the divorce decrees, since they were entered on constructive service, might have been, and in fact for this very reason were, held for naught in North Carolina. This, and this alone, is what the court of last resort overruled and "reversed". The record did not disclose a finding by the jury that the defendants had actually acquired *bona fide* domicils in Nevada. Indeed, they may have found just the reverse. The verdict was a general one and there was evidence to support the State's challenge to the defense on the single ground of defective process or on the dual ground of no *bona fide* domicil and no valid process, albeit the record indicated the latter as the basic cause for sustaining the challenge. The indefiniteness of the record in this respect, however, coupled with an admission which the State regarded as immaterial under the *Haddock* Case, induced the reversal of the judgment of affirmance. In other words, the legal theory upon which the State chiefly relied to defeat the defense set up by the defendants was disapproved. This did not perforce preclude further challenge to the defense on other grounds. It eliminated the second premise, but it did not work an acquittal of the defendants. An error in respect of the defense set up in a criminal action would not dispose of the indictment. Moreover, the concession was made in the appellate court. Had such admission been made by the solicitor in the trial court and acted upon by the jury, a different situation might have arisen. But that is another

matter. 20 Am. Jur. 469. See S. v. Butler, 151 N. C. 672, 65 S. E. 993, 25 L. R. A. (N. S.) 169, 19 Ann. Cas. 402. To sustain the conviction and the judgment upholding it, the State was compelled to rely on the principle of the Haddock decision because it was the main theory of the trial. The issue was squarely joined.

The effect of the decision of the Supreme Court of the United States in this case is to preserve the sufficiency and effectiveness of constructive service of process in actions for divorce in proper cases of domicil. The pronouncement is that full faith and credit to such proceedings may no longer be denied in other states of the Union upon this ground alone. Speaking directly to the point, the majority opinion says: "So when a court of one state acting in accord with the requirements of procedural due process [fol. 111] alters the marital status of one domiciled in that state by granting him a divorce from his absent spouse, we cannot say its decree should be excepted from the full faith and credit clause because its enforcement or recognition in another state would conflict with the policy of the latter".

The issue of domicil was expressly left open, as witness the following from the opinion: "Nor do we reach here the question as to the power of North Carolina to refuse full faith and credit to Nevada divorce decrees because, contrary to the findings of the Nevada court, North Carolina finds that no *bona fide* domicil was acquired in Nevada." And further: "If the case had been tried and submitted on that issue (domicil) only, we would have quite a different problem, as Bell v. Bell indicates. We have no occasion to meet that issue now and we intimate no opinion on it. However it might be resolved in another proceeding, we cannot evade the constitutional issue in this case on the easy assumption that the petitioners' domicil in Nevada was a sham and a fraud."

Following this last suggestion and faced with the appraisal that the case had been tried in the main upon an unsound principle of law, we remanded it for another hearing or a new trial, as is the rule in this jurisdiction. 222 N. C. 609, 24 S. E. (2d) 256. Where a case is tried under a mis- [fol. 112] apprehension of the law, the practice is to remand it for another hearing. S. v. Calcutt, 219 N. C. 543, 15 S. E. (2d) 9; McGill v. Lumberton, 215 N. C. 752, 3 S. E. (2d) 324. This then became the law of the case. "A decision by the Supreme Court on a prior appeal constitutes the law of the

case, both in subsequent proceedings in the trial court and on a subsequent appeal." Harrington v. Rawls (6th syllabus), 136 N. C. 65, 48 S. E. 57. See Robinson v. McAlhaney, 216 N. C. 674, 6 S. E. (2d) 517, and cases there cited. It results, therefore, that the plea of former jeopardy and motion to dismiss were properly overruled. S. v. Rhodes, 112 N. C. 857, 17 S. E. 164; United States v. Ball, 163 U. S. 662.

We now come to the exceptions noted during the trial after the special pleas had been overruled.

The defendants are charged with bigamous cohabitation in violation of G. S. 14-183 (C. S. 4342), the pertinent provisions of which follow: "If any person, being married, shall contract a marriage with any other person outside of this State, which marriage would be punishable as bigamous if contracted within this State, and shall thereafter cohabit with such person in this State, he shall be guilty of a felony . . . Nothing contained in this section shall extend . . . to any person who at the time of such second marriage shall have been lawfully divorced from the bond of the first marriage . . ."

Upon the issues raised by the pleas of traverse, the prosecution offered evidence tending to show that each of the defendants had been previously married; that their respective spouses were still living at the time of the first trial; that the defendants had undertaken to contract a marriage in the State of Nevada, and that thereafter they had cohabited with each other in this State. This made out a *prima facie* case, sufficient to carry the issue to the jury, and hence the demurrer to the evidence was properly overruled. S. v. Herron, 175 N. C. 754, 94 S. E. 698.

It will be observed that the statute does not apply to persons who have been "lawfully divorced" from the bond of the first marriage at the time of the second marriage. Such persons are exempt from the operation of the statute, and properly so. Hence a lawful divorce from the bond of the first marriage at the time of the second marriage would be a defense to the prosecution.

The defendants set up in defense their respective divorces obtained in the State of Nevada. The court in- [fol. 113] structed the jury that the record of these divorces, offered by the defendants, constituted *prima facie* evidence of their lawfulness and binding effect, not only in the State of Nevada, but also in the State of North Caro-

lina and every other state. Loughran v. Loughran, 292 U. S. 216, 78 L. ed. 1219.

In reply the prosecution contended that neither of the defendants had acquired an actual, *bona fide* domicil in the State of Nevada at the time of the institution of the divorce actions, and that the proceedings, while apparently regular, were in fact void for want of jurisdiction. Andrews v. Andrews, 188 U. S. 14, 47 L. ed. 366.

In this connection the court instructed the jury as follows:

1. "If a person had a domicile in North Carolina, and such person leaves North Carolina and goes to the State of Nevada simply and solely for the purpose of obtaining a divorce in the State of Nevada, and with the intention of returning to the State of North Carolina when such divorce is obtained, such person never loses his domicile in North Carolina, and never acquires a new domicile in the State of Nevada."

2. "If a court in a suit in the State of Nevada should grant a divorce to a plaintiff who is not domiciled in Nevada, against a non-resident spouse who is not domiciled in the State of Nevada, and who is not personally served with summons in Nevada, and who does not enter a general appearance in the suit in the court in Nevada, then the divorce granted by the court in Nevada in such instance is void, and is not entitled to full faith and credit in the State in which the non-resident spouse has his or her domicile."

If these pronouncements be sound, the exceptions taken on the trial are without substantial merit and cannot be sustained.

The first instruction would seem to be in accord with the decisions on the subject. Leaving one's domicil of origin and going into another state simply and solely for the purpose of obtaining a divorce, with a mind of immediately returning, is not sufficient to effect a change of domicil. McKarthy v. McKarthy, 39 N. Y. S. (2d) 922; Commonwealth v. Esenwein, 35 A. (2d) 335; Commonwealth v. Kendall, 162 Mass. 221, 38 N. E. 504; 106 A L R 6, et seq. The *animus manendi* would be lacking, Williamson v. Osenton, 232 U. S. 619; 106 A L R 14.

[fol. 114] Domicil is a matter of fact and intention. In Re Martin, 185 N. C. 472, 117 S. E. 561; 17 Am. Jur. 595. In ordinary acceptation, it is the place where one lives or has his home. Reynolds v. Cotton Mills, 177 N. C. 412, 99 S. E. 240. Two circumstances must concur in order to establish a domicil: first, residence, and secondly, the intention to make it a home, or to live there permanently, or, as some of the cases put it, indefinitely. Horne v. Horne, 31 N. C. 104; Thayer v. Thayer, 187 N. C. 573, 122 S. E. 307. To effect a change of domicil, therefore, the first domicil must be abandoned with no intention of returning to it, and actual residence taken up in another place coupled with the intention to remain there permanently, or indefinitely. Roanoke Rapids v. Patterson, 184 N. C. 135, 113 S. E. 603; Annotation, 148 A L R 1413.

On the other hand, the jury was instructed that if the defendants went to Nevada with the requisite intent and actually acquired a domicil there, though they later changed their minds and returned to this State, the courts of that State acquired jurisdiction of the marital status of the defendants and the decrees in evidence would be entitled to full faith and credit in this State and every other state. Davis v. Davis, 305 U. S. 32, 83 L. ed. 26; 118 A L R 1518; Atherton v. Atherton, 181 U. S. 155, 45 L. ed. 794. The court further instructed the jury that since the defendants had set up these foreign judgments as a defense and the prosecution had challenged them, the practice in this jurisdiction was to require the defendants to show to the satisfaction of the jury that they had acquired *bona fide* domicils in the foreign state at the time of the institution of the divorce proceedings. S. v. Melton, 120 N. C. 591, 26 S. E. 933. In other words, having pleaded lawful divorces in defense, the burden was on the defendants to satisfy the jury of their lawfulness. S. v. Herron, *supra*; S. v. Norman, 13 N. C. 222. And while the decrees, standing alone, were to be taken as *prima facie* valid, nevertheless they were not conclusive. Streitwolf v. Streitwolf, 181 U. S. 179, 45 L. ed. 807; Thompson v. Whitman, 85 U. S. 457. At the threshold of the case, however, and throughout the hearing, the prosecution was required to establish the guilt of the accused beyond a reasonable doubt. S. v. Harris, 223 N. C. 697. Under these instructions, the jury has resolved the issue against the defendants, and the evidence is amply sufficient to support the verdict. Indeed, it was

said on the former hearing, "the evidence indicates collu-
[fol. 115] sion between the defendants, and bad faith in attempting to secure decrees of divorce, contrary to the laws of this State."

Perhaps it should be noted that what is here said in respect of the "burden of satisfaction" has reference to a defense pleaded in a criminal action, the validity of which is challenged by the prosecution. S. v. Harris, *supra*. "When a divorce is set up as the sole defense to an indictment, as in this case, the invalidity of such defense is not a collateral matter, but a legitimate reply by the State directly impeaching the defense set up". S. v. Herron, *supra*. It should not be confused with the rules applicable in civil actions. 143 A L R 1307.

The second instruction above quoted is directly supported by what was said in Bell v. Bell, 181 U. S. 175, 45 L. ed. 804. "No valid divorce from the bond of matrimony can be decreed on constructive service by the courts of a state in which neither party is domiciled". Jurisdiction of the court granting a divorce in one state may be impeached in another, and if it appear that neither party had acquired a *bona fide* domicil when and where the proceedings were instituted, notwithstanding recital of the jurisdictional fact and evidence supporting it, the decree annulling the marriage would be void and entitled to no protection under the full faith and credit clause of the Federal Constitution. In re Bingham's Will, 39 N. Y. S. (2d) 756; McKarthy v. McKarthy, *supra*; Commonwealth v. Esenwein, *supra*; Annotation 143 A L R 1294; 31 Am. Jur. 156. Nothing was said in Davis v. Davis, *supra*, which militates against this position. See annotation 118 A L R 1524.

In Andrews v. Andrews, *supra*, it was said that in divorce actions, domicil is the inherent element upon which jurisdiction must rest, whether the proceeding be *ex parte* or *inter partes*. Where one's domicil is, there will his marital status be also. The marriage relation is interwoven with public policy to such an extent that it is dissolvable only by the law of the domicil. So the domiciliary state, and no other, furnishes the proper forum for valid divorce proceedings. Domicil of at least one of the parties is the *sine qua non* to jurisdiction in actions for divorce. 143 A L R 1298. A domicil once obtained is never lost until another is acquired. Reynolds v. Cotton Mills, *supra*.

[fol. 116] Here, the jury has found that the defendants were domiciled in this State when they brought their actions for divorce in Nevada; that they had acquired no *bona fide* domicil in that State, and that the Nevada decrees were ineffectual to sever the marriage ties. The result was a rejection of the pleas interposed by the defendants, and a conviction as charged in the bill of indictment. The record and the law applicable to the facts appearing thereon support the jury's findings. German Sav. & Loan Security v. Dormitzer, 192 U. S. 125, 48 L. ed. 373.

It was held in Thompson v. Whitman, 85 U. S. 457, that the full faith and credit clause did not prevent an inquiry into the jurisdiction of the court by which a judgment offered in evidence was rendered; that the record of a judgment rendered in another state might be contradicted as to the facts necessary to give the court jurisdiction, and, that if it should appear such facts did not exist, the record would be a nullity, notwithstanding a recital in the judgment that such facts did exist. See Lefferts v. Lefferts, 263 N. Y. 131, 188 N. E. 279, and Foster v. Foster, 46 N. Y. S. (2d) 320.

There remains to be considered the constitutionality of the statute under which the defendants have been indicted and convicted. It is challenged upon the ground that it offends both the Federal and State Constitutions. This was the subject of investigation in the case of S. v. Moon, 178 N. C. 715, 100 S. E. 614. The constitutionality of the enactment was there upheld. It would only be repetitious to reiterate here what was said there. Nor is the fact that the bigamous cohabitation took place in Avery County, and not in Caldwell, fatal to the prosecution. S. v. Moon, *supra*. The defendants originally lived in Caldwell County and were apprehended there. The venue is prescribed by the statute: "Any such offense may be dealt with, tried, determined and punished in the county where the offender shall be apprehended, or be in custody, as if the offense had been actually committed in that county."

From a legal standpoint, it all comes to this: On the first appeal the State relied on the case of Haddock v. Haddock. We were minded to follow that case. It was overruled by the Supreme Court of the United States. The State now relies on the case of Bell v. Bell. We are disposed to follow this case.

A careful perusal of the record leaves us with the impression that the case has been tried in accordance with the pertinent decisions on the subject, and that it is free from reversible error. Hence, the verdict and judgments must be upheld.

No Error.

A true copy Adrian J. Newton, Clerk of the Supreme Court of North Carolina. (Seal.)

[fol. 117] IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

STATE

v.

O. B. WILLIAMS and LILLIE SHAVER HENDRIX

Appeal docketed 10 February, 1944.
Case argued 21 March, 1944.
Opinion filed 12 April, 1944.
Final Judgment entered 12 April, 1944.

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the foregoing to be a full, true and perfect copy of the record and proceedings in the above entitled case, as the same now appear from the originals on file in my office.

I further certify that the rules of this Court prohibit filing of petition to rehear in criminal actions and that the opinion of this Court filed April 12, 1944, hereto attached, is the final decision of the Supreme Court of North Carolina, the Court of last resort in said State.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in Raleigh, North Carolina, this 13 April, 1944.

Adrian J. Newton, Clerk of the Supreme Court of the State of North Carolina. (Seal)

[fol. 118] [Endorsed:] No. 291 Monday Apr. 3, 1944. State v. Williams. Stacy, C. J. No. Error Sch. Filed Apr. 12, 1944, in the Office of Clerk Supreme Court, of North Carolina. Caldwell.

[fol. 118] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 84

ORDER ALLOWING CERTIORARI—Filed June 12, 1944

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted, and the case is assigned for argument immediately following No. 668, Esenwein vs. Commonwealth ex rel. Esenwein.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 48,492. North Carolina Supreme Court. Term No. 84. O. B. Williams and Lillie Shaver Hendrix, Petitioners, vs. The State of North Carolina. Petition for a writ of certiorari and exhibit thereto. Filed May 13, 1944. Term No. 84 O. T. 1944.

(3251)